

15
NO. 9989

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United States
Circuit Court of Appeals
For the Ninth Circuit.

HYMAN HOWARD GOODMAN,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the
United States for the Southern District
of California, Central Division.

FILED

FEB 27 1942

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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No. 15091

Filed Oct. 22, 1941

Viol: Section 88, Title 18, United States Code (Conspiracy to violate Section 99, Title 50, United States Code, and Presidential Proclamation of July 2, 1940.)

In the District Court of the United States in and for the Southern District of California, Central Division.

INDICTMENT

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California on the second Monday of September in the year of our Lord one thousand nine hundred forty-one:

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oath present:

That

KICHIRO TAKIZAWA,
GEORGE M. NAKAUCHI,
KENKICHI TAKAHASHI,
HYMAN HOWARD GOODMAN,
ELWOOD L. KEELER, and
HIROSHI YAMAGUCHI,

hereinafter called the defendants, whose full and true names are, and the full and true name of

each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, towit: prior to the dates of the commission of the overt acts hereinafter set forth, and continuously thereafter to and including the date of finding and presentation of this indictment, did knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with each other, and with divers other persons whose names are to the grand

[2]

jurors unknown, to commit an offense against the United States of America and the laws thereof, the offense being to knowingly, wilfully, unlawfully and feloniously export from the United States to Japan, industrial diamonds, without authorization by a license of the Secretary of State as required by Presidential Proclamation dated July 2, 1940;

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that at the hereinafter stated times, in pursuance of, and in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid, the hereinafter named defendants did commit the following overt acts in the City of Los Angeles, County of Los Angeles, state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court:

1. During the month of August, 1941, the exact date being to the grand jurors unknown, defendant Hiroshi Yamaguchi furnished the sum of \$13,000.00 to defendant Kirchiro Takizawa:

2. On or about August 11, 1941, defendant Elwood L. Keeler sold to defendant Hyman Howard Goodman in the present of defendant Kenkichi Takahashi approximately \$2210.11 worth of industrial diamonds;

3. On or about September 4, 1941, defendant Elwood L. Keeler sold to defendant Hyman Howard Goodman in the presence of defendants Kenkichi Takahashi and Kirchiro Takizawa approximately \$3731.00 worth of industrial diamonds;

4. On or about September 16, 1941, defendants Elwood L. Keeler, Hyman Howard Goodman, Kenkichi Takahashi, Kirchiro Takizawa and George M. Nakauchi met at Los Angeles, California;

5. On or about October 16, 1941, defendant George M. Nakauchi had in his possession approximately \$15,000 worth of industrial diamonds; [3]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

WM. FLEET PALMER,

United States Attorney.

[Endorsed]: No. 15091. United States District Court, Southern District of California, Central Division.—The United States of America vs. Kichiro Takizawa, George M. Nakauchi, Kenkichi Taka-

hashi, Hyman Howard Goodman, Elwood L. Keeler and Kiroshi Yamaguchi. Indictment Vio: 18 USC 88. A true bill, W. A. Horrell, Foreman. Filed Oct. 22, 1941. R. S. Zimmerman, Clerk. Bail, \$10,000. [4]

At a stated term, to wit: The September Term, A. D. 1941, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 27th day of October in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable Ben Harrison, District Judge.

No. 15,091-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KISHIRO TAKIZAWA, et al.,

Defendants.

This cause coming on for arraignment and plea of defendants Kishiro Takizawa, George M. Nakachi, Kenkichi Takahashi, Hyman Howard Goodman, Elwood L. Keeler, and Hiroshi Yamaguchi; R. K. Lambeau, Assistant U. S. Attorney, appear-

ing as counsel for the Government; Leo Goodman and M. Seaton Cohen, Esqs., appearing as counsel for Defendant Goodman; J. Marion Wright, Esq., appearing as counsel for Defendants Takizawa, Nakauchi, Takahashi, and Yamaguchi; and Glen Behymer Esq., appearing as counsel for Defendant Keeler; all of the said defendants being present, Defendants Takizawa, Nakauchi, and Takahashi in custody, and Defendants Goodman, Keeler, and Yamaguchi on bond; and A. Wahlberg, Court Reporter, being present and reporting the testimony and the proceedings:

Each of the said defendants states his true name is as set forth in the Indictment. Defendants Goodman, Keeler, and Yamaguchi, respectively, plead not guilty, and it is ordered that the cause as to Defendants Takizawa, Nakauchi, and Takahashi be, and it hereby is, continued to 10 A.M., October 29, 1941, for plea. It is further ordered that the cause be, and it hereby is, continued to November 3, 1941, at 2 P.M., before Judge McCormick for setting for trial for defendants Goodman, Keeler, and Yamaguchi. [5]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the Defendant, Hyman Howard Goodman, Guilty as charged in the Indictment; and find the Defendant,

Elwood L. Keeler Guilty as charged in the Indictment.

Dated: Los Angeles, California, November 27, 1941.

BEN P. GRIFFITH

Foreman.

[Endorsed]: Filed Nov. 27, 1941. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk.

[6]

District Court of the United States

Southern District of Calif.

Central Division

No. 15091-BH

Criminal Indictment in one counts for violation of U.S.C., Title 18, Secs. 88, consp. to violate 50 USC 99, and Presidential Proclam. of July 2, 1940.

UNITED STATES

vs.

JUDGMENT AND COMMITMENT

On this 1st day of December, 1941, came the United States Attorney, and the defendant Hyman Howard Goodman appearing in proper person, and by his attorneys, Leo Goodman, M. Seaton Cohen, Esqs. and,

The defendant having been convicted on verdict

of Guilty of the offense charged in the Indictment in the above-entitled cause, to wit conspiracy to unlawfully, etc. export from the United States to Japan, industrial diamonds, etc. and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the Penitentiary type to be designated by the Attorney General or his authorized representative for the period of Two (2) years, and pay a fine unto the United States of America in the sum of Five thousand (\$5,000.) Dollars, not to stand committed for failure to pay said fine.

It is further ordered that defendant is remanded to the custody of the U. S. Marshal.

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed)

BEN HARRISON

United States District Judge.

[Endorsed]: Filed Dec. 1, 1941. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Hyman Howard Goodman, 724 South Berendo Street, Los Angeles, California.

Name and address of Appellant's attorneys: M. Seaton Cohen and Leo Goodman, 629 South Hill Street, Los Angeles, California.

Offense: Violation of Section 88, Title 18, United States Code (Conspiracy to violate Section 99, Title 50, United States Code, and Presidential Proclamation of July 2, 1940.)

Date of Judgment: December 1, 1941.

Brief Description of Judgment or Sentence: That the defendant Hyman Howard Goodman is guilty of the crime of violating Section 88, Title 18, United States Code (Conspiracy to violate Section 99, Title 50, United States Code, and Presidential Proclamation of July 2, 1940.) as charged in the indictment; that he be imprisoned in a United States penitentiary at a prison designated by the Attorney General of the United States of America for two years and that he pay a fine to the United States of America in the sum of Five Thousand (\$5,000.00) Dollars. [8]

Name of Prison where now confined, if not on bail: Remanded and now held by the United States Marshal at Los Angeles County Jail.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the

Ninth Circuit from the Judgment above-mentioned on the grounds set forth below.

HYMAN HOWARD GOODMAN
Appellant.

Dated: December 3, 1941.

M. SEATON COHEN
LEO GOODMAN

By M.S.C.

Attorneys for Appellant.

GROUND OF APPEAL

1. That there is no evidence to sustain the verdict.

2. That the verdict is contrary to the evidence.

3. That the verdict is contrary to the law.

4. That the verdict is contrary to the facts.

5. That the court committed numerous errors in ruling upon the admissibility of evidence and the various motions made by the defendant Hyman Howard Goodman and in instructing the jury, all of which were highly prejudicial to the defendant Hyman Howard Goodman, and in instructing the jury, all of which were highly prejudicial to the defendant Hyman Howard Goodman. [9]

6. That the Court erred in denying defendant Hyman Howard Goodman's motion to dismiss as to said defendant Hyman Howard Goodman at the close of the evidence for the United States.

7. That the Court erred in not directing a verdict of not guilty on the count as set forth in the

indictment returned herein on the ground and for the reason that the evidence was wholly insufficient to show that the defendant Hyman Howard Goodman was guilty of the crime as charged herein.

8. That the Court erred in making certain remarks in the presence of the jury prejudicial to this defendant Hyman Howard Goodman.

9. That Section 6 of the Act of Congress entitled "An Act to Expedite the Strengthening of the National Defense" approved July 2, 1940 and the Proclamation by the President of the United States of America, No. 2413, dated July 2, 1940, are unconstitutional in and for each of the following grounds: (1) That it is an unlawful deprivation of liberty, freedom and property without due process of law and contrary to the Constitution of the United States of America. (2) That the said Act of Congress and the said Proclamation constitute an unlawful delegation of power to the President and is void and unconstitutional.

10. That Section 6 of the Act of Congress entitled "An Act to Expedite the Strengthening of the National Defense" approved July 2, 1940 and the Proclamation by the President of the United States of America, No. 2413, dated July 2, 1940, are unconstitutional and void.

11. That the Proclamation by the President of the United States of America, No. 2413, dated July 2, 1940, is unconstitutional and void.

12. That by reason of the facts alleged in Paragraphs 9, 10 and 11 and the facts alleged in each

paragraph separately, the Court did not have jurisdiction to do any of the following acts: a) Try the defendant Hyman Howard Goodman on the charges herein. b) Sentence the defendant Hyman Howard Goodman on the charges herein. c) To do or perform each of the acts done and performed by the Court in the above-entitled case. [10]

13. That the District Attorney committed prejudicial error in his argument to the jury.

14. The Court erred in his refusal to give the instructions to the jury requested by this Defendant.

15. The Court erred in his instructions to the Jury herein.

[Endorsed]: Received copy of within notice this December 3, 1941. Wm. Fleet Palmer, U. S. Attorney. Filed Dec. 3, 1941. [11]

[Title of District Court and Cause.]

BAIL BOND ON APPEAL

Know All Men By These Presents:

That I, Hyman Howard Goodman, of the City of Los Angeles, California, as principal and Fannie Goodman and Fannie D. Ehrlich, as surety, are jointly and severally held firmly bound unto the United States of America in the sum of Twenty Thousand (\$20,000.00) Dollars for the payment of

which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

The condition of the foregoing obligation is as follows:

Whereas, later, to-wit, on the 1st day of December, 1941, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said Court in which the United States of America was plaintiff and Hyman Howard Goodman was defendant, a Judgment and sentence was made, given, rendered and entered against the said Hyman Howard Goodman, in the above entitled action, whereas he was convicted as charged in the indictment.

Whereas, in said judgment and sentence, so made, given, rendered and entered against said Hyman Howard Goodman, he was by said judgment sentenced to a United States penitentiary at a prison designated by the Attorney General of the United

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States of America for two years and that he pay a fine to the United States of America in the sum of Five Thousand (\$5,000.00) Dollars.

Whereas, the said Hyman Howard Goodman has filed a notice of appeal from the said conviction and from the said judgment and sentence, appealing to the United States Circuit Court of Appeals for the Ninth Circuit; and

Now, therefore, the condition of this obligation are such that if said Hyman Howard Goodman shall appear in person, or by his attorney, in the United

States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his appeal; and if said Hyman Howard Goodman shall surrender himself in execution of said judgment and sentence, if the judgment and sentence be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit; and if the said Hyman Howard Goodman will appear for trial in the District Court of the United States, in and for the Southern District of California, Central Division, on such day or days as may be appointed for retrial by said District Court, if the said judgment and sentence against him be reversed,

Then this obligation shall be null and void; otherwise to remain in full force and effect.

HYMAN HOWARD GOODMAN

Principal.

724 S. Berendo Street, Los Angeles, California.

Address.

FANNIE D. EHRLICH

Surety.

731 So. Kingsley Dr.

Address.

Los Angeles, California

FANNIE GOODMAN

Surety.

724 So. Berendo

Address.

Los Angeles, California [13]

Approved as to form.

W. FLEET PALMER

United States Attorney

WM. FLEET PALMER

United States Attorney.

I hereby certify that I have examined the within bond and that in my opinion the form hereof is correct and surety thereon is qualified.

M. SEATON COHEN

LEO GOODMAN

Attorneys for Defendant and
Appellant.

The foregoing bond is approved this 5th day of December, 1941.

DAVID B. HEAD

United States Commissioner

[Endorsed]: Dec. 8, 1941. [14]

Leo Goodman and M. Seaton Cohen
Attorneys for Defendant Hyman
Howard Goodman,
629 South Hill Street
Los Angeles, California
TRinity 8505.

In the District Court of the United States in and
for the Southern District of California, Cen-
tral Division.

No. 15019—BH Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KICHIRO TAKIZAWA, GEORGE M. NAKA-
UCHI, KENKICHI TAKAHASHI, HYMAN
HOWARD GOODMAN, ELWOOD L. KEEL-
ER, and HIROSHI YAMAGUCHI,

Defendants.

ORDER EXTENDING TIME TO SETTLE AND
FILE BILL OF EXCEPTIONS OF DE-
FENDANT HYMAN HOWARD GOOD-
MAN

The defendant Hyman Howard Goodman having
taken an appeal on the 3rd day of December, 1941
from the judgment of his conviction herein and an
application having been made by him for an exten-
sion of time to settle and file the Bill of Exceptions

and there being no opposition by the United States Attorney:

It is ordered that the time in which the Bill of Exceptions of the Defendant Hyman Howard Goodman shall be settled and filed is hereby extended until January 9, 1942.

Dated at Los Angeles, California this 29th day of December, 1941.

BEN HARRISON

United States District Judge.

[Endorsed]: Filed Dec. 29, 1941. [15]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 17 inclusive contain full, true and correct copies of Indictment; Minutes of Arraignment and Plea; Verdict of the Jury; Judgment and Sentence; Notice of Appeal; Bail Bond on Appeal; Order Extending Time to Settle and File Bill of Exceptions; Praecipe for Transcript of Record on Appeal, and Stipulation for Elimination of Titles, which together with the Bill of Exceptions and Assignment of Errors transmitted herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$2.95, which amount has been paid to me by the Appellant.

Witness my hand and the seal of the said District Court this 29th day of January, A. D. 1942.

(Seal)

R. S. ZIMMERMAN,

Clerk,

By: EDMUND L. SMITH,

Deputy.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered that the above entitled cause came on regularly for trial on the 25th day of November, 1941, at the hour of 10 o'clock A. M. of said day, before the Honorable Ben Harrison, Judge presiding in Department 6 of the District Court of the United States for the Southern District of California, Central Division, sitting with a jury duly and regularly impanelled and sworn.

The United States of America, plaintiff, appeared by Wm. Fleet Palmer, United States Attorney, and Leo V. Silverstein, Assistant United States Attorney, and the defendants, Kichiro Takizawa, George M. Nakauchi and Kenkichi Takahashi, having previously pleaded guilty to the charge in the indictment against them, and the defendant Hyman How-

ard Goodman being present in person and represented by his attorneys, Leo Good- [18] man and M. Seaton Cohen, and defendant Elwood L. Keeler being present in person, being represented by his attorneys, Glen Beyhmer and Ames Beterson, and the matter having been dismissed as to the defendant Hiroshi Yamaguchi upon motion and order therefor, and the jury having been regularly impanelled and sworn to try said cause aforesaid, the following proceedings were had and the following evidence, both oral, documentary and by stipulation was received, to-wit:

It was stipulated by all the parties that none of the defendants named in the indictment had a license authorizing or permitting them, or either of them, to export industrial diamonds from the United States of America, as required by law.

The witnesses, all of whom were duly sworn, then testified as follows: [19]

TESTIMONY FOR THE GOVERNMENT

Direct Testimony
of

KENKICHI TAKAHASHI

(Through an Interpreter)

Examined by Mr. Silverstein:

The Witness: I have pleaded guilty to indictment No. 15091 in which I was one of the defendants.

I know George M. Nakauchi, Hyman Howard Goodman, Keeler and Takizawa. I have known Takizawa since July and Nakauchi since June of this year.

I saw Goodman about the beginning of June of this year at my home on 58th Street, Los Angeles. My first conversation with him pertaining to industrial diamonds was at my home during June.

“Q. Would you state what the conversation was?

A. I said that I had an order for diamonds from Japan and if I were able to fill that order, I said I would like to purchase them.

Q. Was anything else said?

A. We talked about machinery.

Q. Anything else?

A. And I also talked about the purchasing of old stockings, ladies' old stockings.

*

*

.

*

*

*

(Testimony of Kenkichi Takahashi.)

“Q. What was said in that conversation that you had with Mr. Goodman about obtaining a license?

* * * * *

“A. I gave him the list, and I told him to obtain the license.

Q. What did he say?

A. He said he would try.

Q. What list were you referring to?

A. A number of articles on there. [20]

Q. Were there any articles or industrial diamonds on the list?

A. Yes; that was also on there.

Q. Was there anything else said in this conversation with Mr. Goodman pertaining to industrial diamonds?

A. We were talking about the diamonds right along during the whole conversation.

The Court: What were you saying about them?

The Witness: I only talked about the purchasing of the diamonds.

The Court: What were you saying about the purchase of the diamonds? Not what your conclusion was, but what did you say to him, in substance?

The Witness: I talked about the purchasing of the diamonds; nothing in particular; and then also talked about other matters.

(Testimony of Kenkichi Takahashi.)

The Court: What did Mr. Goodman say to you about the diamonds?

The Witness: He said that I would be able to purchase them through him.

The Court: Did you give Mr. Goodman any money at this time to purchase diamonds?

The Witness: Oh, no, I did not give him any money before I had actually made the purchase."

At this time a document was marked Government's Exhibit 1 for identification. Subsequently it was admitted into evidence as Government's Exhibit 1.

(All of the 22 exhibits in this case were introduced by the Government and none by the defendants. For brevity, the exhibits will therefore be hereinafter referred to merely as "Exhibits" without adding the word "Government's"). [21]

Exhibit 1 is a typewritten white sheet of paper as follows:

"H. H. Goodman
Los Angeles
California

3 carats scrap.....	\$1.35	\$4.05
2.05 carats Long NBG.....	1.10	2.26
2 carats lot 65.....	1.35	2.70
3.80 carats Lot Bortz.....	1.25	4.75
		<hr/>
		\$13.76
		.41
		<hr/>
		\$14.17"

(Testimony of Kenkichi Takahashi.)

The Witness: Keeler gave me Exhibit 1 at Goodman's place around the middle of June. The merchandise that appears on this list, Exhibit 1, I only purchased as samples.

Prior to the purchase of the articles listed (Exhibit 1), I was meeting Goodman all the time. I met him at Musto-Keenan Co. I went with Goodman to Musto-Keenan Co., where I met Keeler and we had a conversation. There were present Goodman, Keeler and myself. The conversation did not pertain to Exhibit 1, but to the purchase of more diamonds. That is why I purchased the samples beforehand from Keeler through Goodman. The articles that appear on this list (Exhibit 1) were shown to me by Goodman before I purchased them. This was before I met Keeler. Exhibit 1 was given to me by Goodman at my home.

I had a conversation with Goodman concerning the samples at my home. No one else was present. I said I did not think the quality of the merchandise was very good; the color wasn't good. That is when we decided to go together to Keeler's place. I first went to Musto-Keenan Co. about a week or ten days after I received the samples. I went with Goodman and met Keeler. In the presence of the three of us, I said I wanted to purchase some more diamonds. Keeler explained the diamonds to me and asked me what I was going to use them for.

“Q. What did you say to him? [22]

(Testimony of Kenkichi Takahashi.)

A. I told him I did not know anything at all about diamonds; but I gave him the name of the people that sent me the order from Japan.

Q. Did you tell him where they were going to?

A. I don't think I said anything at that time.

* * * * *

“Q. Did you say anything to him about the people who had requested you to get the diamonds? A. No, I did not.

Q. When did you first have a conversation with Mr. Keeler in which you told him where the diamonds were going to?

A. I did not tell him definitely where they were going.

* * * * *

“Q. What did you say to Mr. Keeler?

A. I said this: I told him that I had received an order from Japan for these diamonds, and I told him that I had myself had no experience with these diamonds or any diamonds; and I said I was going to trust Mr. Keeler entirely, and I asked him to take that responsibility and to go ahead with it.

Q. What did he say?

A. He said that anything he would handle that I would not have to be afraid of losing any money on it.

(Testimony of Kenkichichi Takahashi.)

Q. Now, was Mr. Goodman present when this conversation took place.

A. Yes; he was always there with me."

The Witness: The second time I went to Musto-Keenan's with Goodman, I ordered much better quality samples of industrial diamonds. I made arrangements to purchase everything through Goodman and gave Goodman all the money in Keeler's presence. I arranged with Goodman to give him 10% commission which was finally reduced to 5% with reference to purchasing industrial diamonds.

At this time a package containing diamonds was marked Exhibit [23] 2 for identification. Subsequently it was admitted into evidence.

The Witness: These are the samples that I received from Keeler. I took them with me and left them in my room in a brief case.

I went to Musto-Keenan Co. a number of times with Goodman and had conversations with Keeler with reference to diamonds. I always talked about the quality. I paid Goodman by cash and sometimes by check for the purchase of industrial diamonds. I have checks that I gave him before the account was closed and some that came back after the account was closed.

At this time Exhibit 3 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 3 consists of two notices by the Union Bank & Trust Company, Los Angeles, each entitled

(Testimony of Kenkichi Takahashi.)

“Notice of Returned Items.” Notice No. E3152 states that a check drawn by K. Takahashi for \$524.05 and deposited in the account of H. H. Goodman on July 25, 1941, had been charged to Goodman’s account for “Not sufficient funds.” Notice No. E3242 states that a check drawn by K. Takahashi for \$268.15 and deposited in the account of H. H. Goodman on July 26, 1941, had been charged to Goodman’s account for “Account closed.”

The Witness: I gave Goodman checks for \$268.15 and \$524.05 in July, 1941, for diamonds. I made good and paid cash for the checks that I had given Goodman after my account was closed.

At this time Exhibit 4 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 4 is a check drawn on the California Bank, First and San Pedro office, Los Angeles, dated August 9, 1941, to the order of K. Takahashi in the sum of \$1,228.95, signed by Kichiro Takizawa. It is endorsed by K. Takahashi. It is perforated “Paid 8/11/41.” [24]

The Witness: I took out the cash of this check and paid for diamonds.

At this time Exhibit 5 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 5 is a check drawn on the Yokohama Specie Bank, Ltd., Los Angeles branch, dated September 6, 1941, to the order of K. Takahashi in the sum of \$998.37, signed by H. Yamaguchi. It is en-

(Testimony of Kenkichi Takahashi.)

dorsed by K. Takahashi. It is perforated "Paid 9/6/41".

The Witness: I received this check, Exhibit 5, from Takizawa. The check was cashed and I paid the money to Keeler through Goodman for the purchase. I gave the money to Goodman.

At this time 10 sheets of paper were together marked Exhibit 6 for identification. Subsequently they were introduced into evidence.

The 1st sheet of Exhibit 6 is a typewritten invoice on blank white paper. It is dated July 7, 1941, and addressed to "H. H. Goodman, Los Angeles, California". It lists 8 lots of industrial diamonds for \$354.16, sales tax 3%—\$10.63, total \$364.79. On the left hand lower corner there appear in writing the words "Paid by check 7/7/41."

The 2nd sheet of Exhibit 6 is a typewritten invoice on blank white paper. It is undated and addressed to "H. H. Goodman, Los Angeles, California". It lists 6 lots of industrial diamonds and powder for \$5363.16, sales tax \$160.89, total \$5524.05. In writing there are added the words "commission \$536.31, total \$6060.36". It is signed by E. L. Keeler.

The 3rd sheet of Exhibit 6 is a similar invoice. It is dated July 28, 1941, and is addressed to "H. H. Goodman, Los Angeles, California". It lists 2 lots of diamonds for \$1630.00, sales tax \$48.90, total \$1678.90. In the lower left margin the figure "2094.75" appears in writing. [25]

(Testimony of Kenkichi Takahashi.)

The 4th sheet of Exhibit 6 is a similar invoice. It is dated July 30, 1941, and is addressed to "H. H. Goodman, Los Angeles, California". It lists 4 lots of diamonds for \$1947.15, sales tax \$58.41, total \$2005.56.

The 5th sheet of Exhibit 6 is a similar invoice. It is dated August 8, 1941, and is addressed to "H. H. Goodman, Los Angeles, California". It lists 3 lots of diamonds for \$262.96, sales tax \$7.89, total \$270.85.

The 6th sheet of Exhibit 6 is of white paper with the following words and figures in pencil:

"Amount	11,948	
Credit Cash	1,000	
	<hr/>	
	10,948	
Cr. Mdse.	1,527.40	
	<hr/>	
Balance	9,420.60	
Cr. Cash	7,900.00	
	<hr/>	
Bal. due Monday.....	\$1,520.60	on Mdse.
		received as security
		value \$1630.00
Klatersol	7.50	@ 2.25 1,687.50
Total	1,520.60	50.63
		<hr/>
	1,738.13	\$1,738.13"
	<hr/>	
	\$3,258.73	

The 7th sheet of Exhibit 6 is a typewritten invoice on blank white paper. It is dated August 11, 1941, and is addressed to "Mr. K. Takahashi, Los

(Testimony of Kenkichichi Takahashi.)

Angeles, California''. It lists 9 lots of diamonds for \$3939.57, sales tax \$118.28, total \$4057.85. It also states: "Commission on \$3939.57 at 5%—\$196.98, total \$4254.83".

The 8th and 9th sheets of Exhibit 6 are duplicates of a printed invoice #1475 of Inter-Ocean Traders Bankers Building of Los Angeles. [26] It states: "Invoice of K. Takahashi, Los Angeles, California. Shipped from Los Angeles, Calif., to Los Angeles, Calif., via Personal Delivery''. It lists 9 lots of diamonds by carat weight for \$17,932.17, sales tax \$537.97, total \$18,470.14, plus buyers commission 5% on \$17,932.17—\$896.61, total \$19,366.75. Credit by cash \$16,995.36. Balance due \$2371.39.

The 10th sheet of Exhibit 6 is a typewritten invoice on blank white paper. It is addressed to "H. H. Goodman, Los Angeles, California" and dated July 28, 1941. It lists 2 lots of industrial diamonds for \$1570.00, sales tax \$47.10, total \$1617.10.

The Witness: The 1st sheet of Exhibit 6 pertains to samples of industrial diamonds which they got for me and for which I paid on or about the date set forth in the exhibit. The 2nd and 3rd sheets are also for industrial diamonds. I paid Goodman for the diamonds and was along with Goodman when the merchandise was returned. All the other sheets pertain to diamonds and to merchandise that I returned to Keeler through Goodman. I received a memorandum similar to Exhibit 6 either from Goodman or Keeler.

(Testimony of Kenkichi Takahashi.)

During the months of June and July I purchased from Keeler or Musto-Keenan Co. about \$20,000 of industrial diamonds. In July, 1941, I purchased about \$8,000. I paid Goodman for all those purchases.

“Q. What did you do with the diamonds that were purchased during July of 1941?

A. I returned some of them.

Q. Did you send any of them away?

A. No, I did not send them.

Q. Did you give them to anyone to send away?

A. I gave them to Mr. Nakauchi.

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“Q. Did you ever have a conversation with Mr. Keeler about hearing from anyone in Japan regarding diamonds that had been sent?

A. No, I did not.” [27]

The Witness: I discussed with Keeler the quality of the diamonds and told him I didn't think the quality of the first sample was very good. I spoke occasionally about the quality and that the price was very high.

“Q. Did you say anything to him about anyone advising you as to the quality or the price?

A. I told him that I had received letters quite a bit from Japan in which they referred quite a lot to the quality; I told him that.

(Testimony of Kenkichi Takahashi.)

Q. What did you tell him about those letters that you had received concerning the quality?

A. The demand that was made by Japan was that they wanted extra good quality; and I told him, not being experienced, even though not being experienced in diamonds, I didn't think the quality was very good.

Q. Was anyone else present when you told Mr. Keeler that?"

A. Mr. Goodman was there, and Mr. Takizawa was there at times."

The Witness: I remember twice when Takizawa accompanied Goodman and myself to Musto-Keenan Co. where we saw Keeler. I received and took delivery of industrial diamonds directly from Keeler in Goodman's presence on each occasion.

During August, I was at Musto-Keenan Co, upon quite a few occasions and purchased diamonds on these occasions. In September, 1941, I was taken by Goodman to the airport where I met Keeler and his wife. We then went to Keeler's home but I did not go inside the house. Keeler and I discussed industrial diamonds in Goodman's presence and I said that I would take delivery of an order in about two or three days. I was there 5 or 10 minutes, I think.

A few days later I met Keeler in Attorney Goodman's office in the presence of Goodman, Takizawa and Nakauchi. I had a conversation [28] there

(Testimony of Kenkichi Takahashi.)

with Keeler about taking delivery of industrial diamonds and about diamonds that I wanted to return. I then purchased diamonds from Keeler and paid Goodman about \$8,000 in Keeler's presence. Keeler and Goodman gave me the diamonds in the presence of Takizawa and Nakauchi.

At this time Exhibit 7 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 7 is a check dated September 16, 1941, drawn on the Citizens National Trust & Savings Bank, Los Angeles, to the order of H. H. Goodman in the sum of \$800, signed by T. Anraku. The check is not endorsed and is not marked "Paid" by any bank.

The Witness: I received Exhibit 7 from Nakauichi for diamonds. There wasn't sufficient money in the bank. Therefore, I gave Goodman \$550 in advance and asked him to hold this check; and after that I gave him \$250 in cash. The check was not cashed. I asked Goodman who was holding it to return it; but he said he had forgotten.

At this time Exhibit 8 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 8 is a typewritten invoice on blank white paper. It is undated and is addressed to "H. H. Goodman". It lists 1 lot of diamonds for 700 carats at \$5.60 per carat, price \$3920.00, sales tax 3%, \$117.60, total \$4037.60.

The Witness: This paper, Exhibit 8, recalls to my mind a purchase of industrial diamonds. I paid

(Testimony of Kenkichi Takahashi.)

the money to Goodman in Keeler's presence. Goodman gave the money to Keeler.

“Q. You never at any time had a license to export industrial diamonds, did you?”

A. No, I never did.”

Cross Examination
of

KENKICHI TAKAHASHI

By Mr. Peterson:

The Witness: I was at the Musto-Keenan place of business approximately ten times. I went there during ordinary business hours and there were a lot of other people and employees there [29] at the same time. When I went to Keeler's house I did not get any industrial diamonds there. I spoke to Keeler directly in English.

At this time three packages of industrial diamonds were marked Exhibit 9 for identification. Subsequently they were admitted into evidence.

Direct Examination
of

KENKICHI TAKAHASHI

By Mr. Silverstein (resumed):

The Witness: These (Exhibit 9) are the industrial diamonds that I purchased through Musto-Keenan Co. and for which I paid Goodman. I delivered them to Nakauchi.

(Testimony of Kenkichi Takahashi.)

Cross Examination
of
KENKICHI TAKAHASHI

By Mr. Peterson (resumed):

The Witness: I am 51 years old. I am engaged in the export-import business. I have been going back and forth between Japan and the United States since 1907. I have no home in California and live with my nephew. I have imported and exported various things and articles between Japan and the United States. I came here last in May of this year.

I pleaded guilty to this charge and am out on bail awaiting sentence.

Cross Examination
of
KENKICHI TAKAHASHI

By Mr. Cohen:

The Witness: I saw Goodman a number of times. I came here on May 10th and saw Goodman about a week or ten days later. I told Goodman that I was going in business here and gave him a list of different kinds of merchandise that I was going to handle. In the list was machinery and silk stockings. After the Japanese assets were frozen and Japanese ships were not coming here, so that I could not return to Japan, I suggested to Goodman that it would be a good idea to buy old silk stockings, have them dethreaded and then sell the dethreaded silk to United States mills. [30]

(Testimony of Kenkichi Takahashi.)

“Q. Well, did you ask Mr. Goodman to help you get a warehouse and an office?

A. The reason for that way, at the time that I came, was when I was supposed to export silk stockings and other materials; and I also requested Mr. Goodman to procure for me export licenses for machinery that I was going to export.”

The Witness: I had known Goodman for about four years. I went to Goodman's office quite often and discussed going into business in Los Angeles with him.

“Q. There was no business with Japan then; the President had frozen the assets; and you were going to stay here and go into business; is that right?

A. No; the reason for that was that there were no ships to send the merchandise, and I could not return.”

The Witness: When industrial diamonds were first discussed, I knew that Goodman knew nothing at all about diamonds. Neither did I know anything about them at that time.

At the time I went out to the airport, I went to tell Keeler that I would have the money to take up the rest of the merchandise that I had ordered.

“Q. Now, then, you mentioned some letters from Japan. What letters did you get from Japan?

A. I got all kinds of letters from Japan.

(Testimony of Kenkichi Takahashi.)

Q. Did you get any letters from Japan on industrial diamonds? A. Yes.

Q. When? How long ago?

A. Also in July and August.

Q. They were written in Japanese to you, I suppose? A. Yes.

Q. You didn't show anything like that to Mr. Goodman, did you? [31]

A. No, I did not.

The Court: Did you tell him the contents of the letters?

The Witness: Yes.

The Court: What did you tell him?

By Mr. Cohen:

Q. What did you tell him about that?

A. I told him that they referred to the quality.

Q. Did you ever tell Mr. Goodman the name of any Japanese company that you were doing business with?

* * * * *

"The Witness: No, I never told him.

The Court: Did you tell him who you were buying the diamonds for?

The Witness: No. All I told him was that I was going to send it to Japan.

By Mr. Cohen

Q. When did you tell him that?

A. Right from the beginning.

Q. Was there any export order—did you

(Testimony of Kenkichi Takahashi.)

know whether you could send diamonds to Japan then or not?

A. That is why I asked Mr. Goodman to get an export license for me.

Q. And did you know whether or not anybody ever had an export license at that time to send anything to Japan?

A. I don't know anything at all about that.

Q. When was the first time the words "export license" were ever mentioned to you? Wasn't it after you were arrested?

* * * * *

"The Witness: No, it was not. [32]

"Q. When was the first time that you learned that you had to get an export license?

A. The first time that I gave Mr. Goodman the list of merchandise.

Q. Who told you then? Where did you get that information from?

A. I do not know from any particular person that I heard it, but I knew that I had to have an export license.

Q. Well, where did you learn it?

A. I don't remember."

The Witness: I paid Goodman for the diamonds at all times openly in the presence of Keeler. Two checks that I gave him were not good and checks that Goodman gave to Keeler came back. All Good-

(Testimony of Kenkichi Takahashi.)

man got out of this was a commission which was at first to be 10%, then it was cut to 5%. Out of the 5%, he was to rebate 2% to me. At the beginning he got 5% and I paid 5% for \$5,600.00. This 5% on \$5,600.00 is the only commission I ever paid him. I never paid him another nickel after that. The entire amount of commission that I paid Goodman was a check for \$268.15, which was returned when the bank account was closed. I made the money good afterwards.

I did not know the market price of diamonds and did not take them elsewhere to get them appraised.

I ran a business, a store in Los Angeles, from 1908 to 1916. After those eight years, I was in Los Angeles again for a good many years. I came off and on twelve or thirteen times. I came here for purchases. I was in partnership with the Kio Busan Company in Los Angeles for about three months.

Redirect Examination
of

KENKICHI TAKAHASHI

By Mr. Silverstein:

The Witness: When I went to Musto-Keenan Co. I went into a private office where I saw Keeler.

[33]

Direct Examination
of

MYRON HAIG

By Mr. Silverstein:

At this time Exhibits 10 and 11 were marked for identification. Subsequently they were admitted into evidence.

Exhibits 10 and 11 are two books labeled "Abrasive Cash Sales" of Musto-Keenan Co., Nos. 17 and 18. Each book contains carbon copies of orders and sales memoranda in numerical sequence. The data in these Exhibits which pertain to this case are:

Order No.	Date	Sold to	Item	Price	Sales Tax	Total Price
			Bortz & 10.95			
A 1265	6/30/41	Cash	cts. Diamonds	\$13.21	\$.40	\$ 13.61
A 1267	7/ 7/41	H. H.	Goodman Misc. Bortz	354.16	10.63	364.79
A 1275	7/22/41	"	Bortz	5136.97	154.11	5291.08
A 1280	8/ 1/41	"	Misc. Bortz	1570.00	46.10	1677.10
A 1287	8/11/41	"	"	2210.11	66.30	2276.41
			700 cts lot			
A 1298	9/ 4/41	"	1 1/3's diamonds	3731.00	111.93	3842.93
A 1312	10/ 1/41	"	Misc. Bortz	8115.29	243.46	8358.75

The Witness: I have been the accountant for Musto-Keenan Co. for four years. During the past year I have been in full charge of the accounting department. I am acquainted with Keeler. Exhibit 10 is a cash book. As cash sales are made, a copy is set in this book and copies are given to me. The other copy is kept in this book for record. I record from the original to my book. Exhibit 11 is similar

(Testimony of Myron Haig.)

to Exhibit 10. These Exhibits refer mostly to abrasives.

Exhibits 10 and 11 are records of Musto-Keenan Co. kept in the regular course of business by me as the accountant for the company. The writing in the sales book is Mr. Keeler's handwriting. I make the postings from the cash book, which I have in my hand.

Keeler is Secretary-Treasurer of the company and I work under his supervision. [34]

Voir Dire Examination
of

MYRON HAIG

By Mr. Peterson:

The Witness: Keeler has access to the books and those who work under him keep them under his direction. The books are kept in accordance with the ordinary practices of business.

Direct Examination
of

MYRON HAIG

By Mr. Silverstein (resumed):

The Witness: Order No. A 1265 shows a cash sale but not to whom it was sold.

All these sales in Exhibit 10 and 11 are in Keeler's writing and pertain to industrial diamonds. They show sales to H. H. Goodman except that the first item did not show to whom the sale was made.

(Testimony of Myron Haig.)

Cross Examination
of

MYRON HAIG

By Mr. Peterson:

The Witness: Musto-Keenan Co. has three departments, marble, tile and abrasive. The abrasive department includes grinding wheels, powder and diamonds.

My records are as complete and accurate as nearly as humanly possible. Keeler never told me to make any false or misleading statements in the books. Everything has been kept accurately and open and above-board.

Redirect Examination
of

MYRON HAIG

By Mr. Silverstein:

The Witness: Keeler receives a salary every week and at the end of each accounting period he gets 25% of the abrasive profits as a bonus. He does not receive anything until the end of the accounting period when the profits are fixed. If the abrasive department did not make any money he would not receive any bonus. The sale of the industrial diamonds involved in this case would be included.

The regular accounting period was December 31st but was recently changed to March 31st, so that it would not be determined until March, 1942. [35]

Direct Examination
of

GEORGE TOOMBS,

Examined by Mr. Silverstein:

The Witness: I am a teller in the Union Bank & Trust Company and I am familiar with its records. I brought some records from the bank.

The bank records show the following checks deposited to H. H. Goodman's account were charged back because they were not collected: \$524.05, July 26, 1941; \$268.15, July 29, 1941; \$1137.60, September 10, 1941.

At this time Exhibit 12 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 12 is a check dated July 24, 1941, drawn on the Union Bank & Trust Company, Los Angeles, to the order of Musto-Keenan Co. for \$291.08 and signed by H. H. Goodman. The check has the endorsement stamp of Musto-Keenan Co. There is attached to the check a *a* slip by the Union bank stating that the check was returned because of "Not sufficient funds".

The Witness: This check was returned because there was an overdraft created by the return to the Union Bank on July 26th of the check for \$524.05.

At this time Exhibit 13 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 13 is a check dated September 8, 1941, drawn on the Union Bank & Trust Company to the

(Testimony of George Toombs.)

order of Musto-Keenan Co. for \$1137.60, signed by H. Howard Goodman. The check is endorsed by the stamp of Musto-Keenan Co. The perforation reads "Paid 9/12/41".

The Witness: We had this item, Exhibit 13, returned on September 10 and we have it posted as of that date.

At this time Exhibit 14 was marked for identification. Subsequently it was admitted into evidence.

[36]

Exhibit 14 is a check dated July 7, 1941, drawn on Union Bank and Trust Co. to the order of Musto-Keenan Co. for \$364.79, signed by H. Howard Goodman. The check is endorsed by stamp of Musto-Keenan Co. The perforation reads "Paid 7/9/41".

The Witness: This check was posted against the account and created an overdraft, but on the same date there was a sufficient deposit to warrant paying that check and it was paid.

At this time Exhibit 15 was marked for identification. Subsequently it was admitted into evidence.

Exhibit 15 is a certification slip by Union Bank & Trust Co. It shows that the bank charged the account of H. Howard Goodman for certification of a check dated August 11, 1941, for \$500.00. The perforation reads "Paid 8/11/41".

The Witness: This certified check was charged against the account as soon as it was certified. It

(Testimony of George Toombs.)

was good as of that date and was immediately deducted from the account.

Exhibit 3 shows that two checks were charged against Goodman's account because they did not clear. The name of the drawer of the checks is Takahashi.

Direct Testimony
of

LESLIE E. WEBSTER,

Examination by Mr. Silverstein:

The Witness: I am assistant chief clerk of the Citizens Trust & Savings Bank of Los Angeles. I have the records of the account of K. Takahashi.

There is an item of \$524.05 which came in for payment on July 25, 1941, but was returned because of outstanding collections. There was an item of \$268.15 presented for payment on July 26, 1941, and returned because of "not sufficient funds". Both items were returned to the Union Bank & Trust Company. The account was closed on July 28, 1941.

[37]

Direct Testimony
of

KICHIRO TAKIZAWA

(Through an Interpreter),

Examined by Mr. Silverstein:

The Witness: I know Takahashi, Goodman and Keeler. I have known Takahashi since July of this year. I first met Keeler in July before I met Takahashi. I met Keeler when I went to Musto-Keenan Co. to find out the price of industrial diamonds.

I had a conversation with Keeler alone in the beginning of July, 1941, and asked him the price of diamonds. Keeler did not give me any list, but I had a list of industrial diamonds which I showed him. He said that the price would be the same as on the list. He asked me for what purpose I wanted the diamonds, but I did not say anything. At that time I did not place any order or purchase any diamonds from Musto-Keenan Co.

About a week later I went again to Musto-Keenan Co. and had a conversation with Keeler alone in his private office. I spoke about industrial diamonds and he told me that there were other people, mentioning Takahashi, placing orders for diamonds.

"Q. What did he say to you about Takahashi placing an order for industrial diamonds?

A. Mr. Keeler said that at first he brought him a list and that the list looked rather suspicious.

(Testimony of Kichiro Takizawa.)

Q. He said that you brought him a list that was suspicious? A. Yes.

Q. What did he say about it that made it suspicious?

A. He said, "Who brought up this list?"

Q. What did you say to him?

A. I didn't say anything.

Q. Now, when Takahashi's name was mentioned to you, was anything said further along that line?

A. Mr. Keeler said to me if I was going to purchase that together with Mr. Takahashi that it would be all right. That is all. [38]

Q. Was anyone else's name mentioned on that occasion? A. No.

Q. Was Mr. Goodman mentioned at all?

A. No.

Q. Was that the end of the conversation, or was there something else said?

A. He said that it would be very dangerous if I did not purchase the diamonds together with Mr. Takahashi.

Q. Did he give you any price list different than the one that had been given to you on the first occasion? A. No he did not."

The Witness: I saw Keeler again at about the beginning of August together with Takahashi and Goodman. I went alone to Musto-Keenan Co. and there found Takahashi, Goodman and Keeler. There

(Testimony of Kichiro Takizawa.)

was a conversation but I do not remember whether any diamonds were then purchased.

Takahashi, Goodman, Keeler and myself met again at the same place and had a conversation. Takahashi said that the quality of the diamonds was not very good. Keeler answered that according to the price it was the best.

“Q. Was anything else said?

A. Mr. Takahashi said that there was a big order coming from Japan and he wanted Mr. Keeler to be very careful about the quality.

Q. Did Mr. Keeler say anything in response to that?

A. He said it would be all right.”

The Witness: I think they bought some diamonds then and I saw Takahashi give Goodman the money. I am not positive whether it was money or checks. Takahashi received industrial diamonds on that occasion. That was in the middle of August.
[39]

I did not receive any diamonds from Takahashi and I did not see anybody else receiving them from him. I do not know what happened to any of the industrial diamonds that were purchased by Takahashi during the month of July, 1941.

In the beginning of October I met Keeler, Goodman, Takahashi, and Nakauchi at Goodman's office. We had a conversation about industrial diamonds. Keeler brought the diamonds and showed

(Testimony of Kichiro Takizawa.)

them to Takahashi, the others and myself. Keeler said that that was a very good quality of diamonds. Takahashi then paid Goodman about \$8,000.00 by check and took delivery of the diamonds.

At this time Exhibits 16, 17 and 18 were marked for identification. Subsequently they were admitted into evidence.

Exhibit 16 is a check drawn on the California Bank, First and San Pedro Branch, dated September 5, 1941, to the order of H. H. Goodman for \$1137.60, signed by K. Takizawa. It is endorsed by H. H. Goodman. The perforation shows "Paid 9/8/41".

Exhibit 17 is a check drawn on the California Bank, First and San Pedro Branch, dated September 16, 1941, to the order of H. H. Goodman for \$200.00, signed by K. Takizawa. It is indorsed by H. H. Goodman. The perforation shows "Paid 9/16/41".

Exhibit 18 is a check drawn on the Yokohama Specie Bank, Ltd., dated September 14, 1941, to the order of the California Bank for \$1800.00. It is drawn and signed by H. Yamaguchi. It has the indorsement stamp of the California Bank. The perforation shows "Paid 9/16/41".

The Witness: The signature on the check for \$1137.60, Exhibit 16, is mine. I gave it to Goodman and it was cashed. I think I gave it to Goodman at Takahashi's home.

(Testimony of Kichiro Takizawa.)

“Q. Did it have anything to do with the purchase of industrial diamonds or payment of industrial diamonds? [40]

Q. Yes.”

The Witness: The signature on the check, Exhibit 17, is mine. I gave it to Goodman at Goodman's office on September 16th and it was cashed. It was in payment for industrial diamonds.

I received a check for \$1800, dated September 14, 1941, from Yamaguchi. It was used to purchase industrial diamonds. I gave the money from the check to Takahashi.

I pleaded guilty to the charge in this indictment on October 29, 1941.

Cross Examination
of

KICHIRO TAKIZAWA

By Mr. Peterson:

I am out on bail. Nobody made any promises that it would be easier for me if I testified for the Government.

I have been in the United States for 17 years. During the last five years I have been a commission salesman for refrigeration and electric appliances in Southern California, but not for diamonds.

I did not talk to anybody about the testimony I was going to give in this case before I took the witness stand. I never talked to Mr. Silverstein about what I was going to testify to and never

(Testimony of Kichiro Takizawa.)

told him anything about it. I did not talk to the agents of the Department of Justice or anybody else.

Examination of

KICHIRO TAKIZAWA

By the Court:

I went down myself to Keeler's office the first time with a list to inquire about industrial diamonds. I got the names of the concerns that were handling diamonds out of the telephone book. I had never handled industrial diamonds before. I had been asked by Nakauchi to go and investigate.

Direct Testimony
of

MASARU NAKAUCHI

(Through an interpreter),

Examined by Mr. Silverstein:

The Witness: I pleaded guilty to the charge in this indictment on October 29, 1941. [41]

I know Takahashi, Takizawa, Goodman and Keeler. I never went to Musto-Keenan Co. I became acquainted with Goodman at Mr. Takahashi's in-law's home and met Keeler in Goodman's office in September, 1941. At that time Takahashi, Takizawa, Keeler, Goodman and myself were present. There was a conversation, mostly between Takahashi and Keeler, with reference to the quality of

(Testimony of Masaru Nakauchi.)

diamonds. I did not pay much attention but I saw payments of money by Takahashi to Goodman. I saw Keeler give something to Takahashi. I received three packages, Exhibit 9, from either Takahashi or Takizawa, I am not positive.

“Q. What did you do with them after you received them from either one of those persons?

A. As this was very valuable material, rather than to let anybody else have it, I kept them in my store.

Q. Where was that?

A. On a shelf in the store.

Q. What location?

A. 15471 South Western Avenue, Gardena.

* * * * *

“Q. Where did you put them?

A. On a shelf in my store.

Q. Had you received other industrial diamonds other than the ones that are before you as Exhibit 9?

A. Once before that time. I just kept them there.

* * * * *

“Q. You say that you did receive other diamonds? A. Yes.

Q. From whom?

A. I think Mr. Takahashi. I immediately returned them because the quality was bad. Mr. Takahashi said he was going to have them exchanged.

(Testimony of Masaru Nakauchi.)

Q. Other than that, have you ever received any other diamonds? [42]

A. Yes, once.

Q. From whom?

A. I think either Mr. Takahashi or Mr. Takizawa.

Q. And when was that?

A. The end of July, I think.

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“Q. What did you do with them?

A. I at one time had in my hand a bag or something that contained diamonds.

Q. What did you do with them after you received them?

A. I left them in a certain room in a hotel in San Francisco.

Q. You did that yourself? A. Yes.

The Court: Who gave you the diamonds?

The Witness: I think I received them from Mr. Takizawa.

The Court: Did you take them to San Francisco?

The Witness: My friend was returning to Japan and I chauffeured him up there.

By Mr. Silverstein:

Q. You chauffeured somebody that was going back to Japan? A. Yes.

Q. You drove somebody up north, is that it? A. Yes.

(Testimony of Masaru Nakauchi.)

The Court: You took the diamonds with you?

The Witness: I do not know whether I had the diamonds or not, but I understood—I heard that the diamonds were in that bag.

Mr. Peterson: That, of course, ought to be stricken.

The Court: Just a moment. I will find out. What bag?

The Witness: A portable phonograph. [43]

The Court: Who told you there were diamonds in there?

The Witness: Mr. Takizawa.

The Court: Is that one of the defendants in this case?

The Witness: The man that testified here before me.

Mr. Peterson: I now move to strike the testimony relative to the San Francisco episode upon the grounds that it has nothing to do with any of the issues in this case, entirely outside of the scope of this indictment; it is hearsay as against the defendant whom I represent.

The Court: It is a statement by a co-defendant. He said the satchel or bag contained industrial diamonds, and he took them to San Francisco.

Mr. Peterson: My recollection of his testimony is that he was told that they contained it.

The Court: He said one of the defendants

(Testimony of Masaru Nakauchi.)

told him. That would be binding, if there is a conspiracy.

Mr. Peterson: If it was within the scope of the indictment.

The Court: Objection overruled.

Mr. Peterson: Note an exception. May it be understood that if one of us makes an objection, it may be deemed by the other counsel."

FIRST EXCEPTION

Cross Examination of

MASARU NAKAUCHI

By Mr. Peterson:

The Witness: I have a small store and handle dry goods and dresses. I have been in California about three years and started from the beginning in the same business in Southern California.

I put the diamonds on a shelf in my store on Western Avenue. Keeler did not tell me to do that.

I happened to be up at the Bankers Building, where I saw the industrial diamonds, because I was riding in Takizawa's car, [44] so I just continued with him for the ride.

Direct Testimony
of

E. R. McDANIEL

Examined by Mr. Silverstein:

The Witness: I am a salesman for Musto-Keenan Co. and was so employed during June, July, August, and September of this year.

I know H. H. Goodman and saw him at the plant of Musto-Keenan Co. I gave Goodman some industrial diamonds as samples when Keeler was away. I saw Goodman there upon two or three other occasions. I also saw Takahashi there. I believe I saw another of the Japanese sitting here. I saw him more than once at the office of Musto-Keenan Co. with Keeler.

Industrial diamonds are used for a number of purposes, for lapping, truing, grinding wheels, making diamond saws, cutting vitreous ware, lapping tools, boring tools.

“Q. When you saw these gentlemen down there, there wasn’t any particular secrecy about it, was there? A. No, sir.

Q. Just came in looking like anybody else?

A. Yes, sir.

Q. Wasn’t hiding off in a room, locked up, or anything like that? A. No, sir.

Q. You weren’t whispering?

A. No, sir.

Q. Just talking like ordinary human beings do when they transact business, isn’t that correct? A. Yes, sir.”

Direct Testimony
of

EDWARD POLLAK,

Examined by Mr. Silverstein:

The Witness: I am vice-president and general manager of Musto-Keenan Company and held that position during June, July, August and September of this year.

I saw Goodman at the place of business of Musto-Keenan Co. [45] during those months on more than one occasion. On one occasion I saw him with Takahashi and on another occasion I saw him going through the hall.

Direct Testimony
of

WILLIAN JOHN McCORMICK

Examined by Mr. Silverstein:

The Witness: I am a special agent for the Federal Bureau of Investigation and have held that position since December 16, 1940.

I know Elwood Keeler. I first saw him on September 15, 1941, at approximately 5:00 P. M. at the Glendale Airport. I know H. H. Goodman, Takizawa, Nakaushi, Takahashi, and I also know Yamaguchi who is no longer a defendant in this case.

At this time 4 sheets of paper dated July 28 and July 30 were marked Exhibit 19 for identification. Subsequently they were admitted into evidence.

(Testimony of William John McCormick.)

Exhibit 19 consists of 4 typewritten sheets of blank paper and are two invoices (2 copies of each invoice). The 1st invoice, dated July 28, 1941, and is addressed to H. H. Goodman. It lists two lots of 400 carats of diamonds for \$1570.00, sales tax \$47.10, total \$1617.10. The 2nd invoice, dated July 30, 1941, and is addressed to H. H. Goodman. It lists 4 lots of 400 carats of diamonds for \$1947.15, sales tax, \$58.41, total \$2005.56.

The Witness: I saw Exhibit 6 on October 20 when the defendant Goodman gave it to me in the office of the Federal Bureau of Investigation and I had a conversation with Goodman concerning it. At that time Goodman was not under arrest.

“Q. What was the conversation concerning that exhibit that I have shown you?

A. Mr. Goodman presented these papers and stated that they were bills which he had received from Mr. Keeler. He stated that these bills were the bills [46] that he received for the purchase of the industrial diamonds mentioned in the statements. He stated that at the time of each transaction a bill had been drawn up—two bills had been drawn up: one in the amount that he paid to the Musto-Keenan Co. to Mr. Keeler and another one for an increased amount which had been given him by Mr. Keeler which he, in turn, gave to Mr. Takahashi, Mr. Nakauchi and Mr. Takizawa, and received from

(Testimony of William John McCormick.)

those three gentlemen the sum of money in the amount of the increased bill. He explained it by saying——

Q. What did he say; not what he explained. Just state what he said.

A. By saying that there was a false or a fictitious bill presented in order that he might receive a commission from the Musto-Keenan Co. from Mr. Keeler, and also receive a commission from Takahashi, Takizawa and Nakauchi.”

The Witness: I received Exhibit 8 from Takahashi and Exhibit 19 from Goodman. Goodman said that he had received it from Keeler.

“Q. Well, are they duplicates of the other exhibit?

A. He stated that the two statements dated July 28, one in the amount of \$1617.10 and the other in the amount of \$1678.90, had both been received by him, Mr. Keeler. He stated that he actually paid Mr. Keeler \$1617.10 for the purchase of the industrial diamonds shown on the statement which consisted of 400 carats. He stated that the other bill in the amount of \$1678.90 also for the same 400 carats of diamonds was received likewise from Mr. Keeler. He said that he took the bill in the amount of \$1678.90 and presented it to Mr. Takahashi, Takizawa and Nakauchi and received from them \$1678.90 and then paid Mr. Keeler \$1617.10. [47]

(Testimony of William John McCormick.)

Q. Are you finished?

A. No. On the bill dated July 30, 1941, in the amount of \$2005.56 he stated that this amount of money had been paid by him to Mr. Keeler, and he stated that he had presented a bill in a larger amount to Mr. Takahashi, Mr. Takizawa, and Mr. Nakauchi and received from them the increased amount, although he would only have to pay Mr. Keeler the face amount of this bill."

The Witness: I saw Exhibit 2 in a brown leather bag in a room occupied by Takahashi in Los Angeles. I saw Exhibit 9 consisting of three packages when they were located on a shelf in a dry goods store owned by Nakauchi on South Western Avenue and took them from that place.

At this time Exhibits 2-19, inclusive, previously marked for identification, were admitted into evidence without objection.

At this time a statement by the defendant Elwood L. Keeler, dated October 14, 1941, and consisting of eight sheets, was marked Exhibit 20 for identification.

The Witness: Elwood L. Keeler signed Exhibit 20 in my presence and my name appears as a witness. Mr. Holmes of the Federal Bureau of Investigation also appears as a witness. This was a free and voluntary statement on the part of Mr. Keeler.

(Testimony of William John McCormick.)

At this time Exhibit 20 was admitted into evidence against the defendant Keeler only and the Court instructed the jury that it was not to be considered in any sense as evidence against the defendant Goodman.

EXHIBIT 20

was then read to the jury. [48]

“Los Angeles, California, October 14, 1941

“I, Elwood L. Keeler, make the following voluntary statement to W. J. McCormick and Frank J. Homes whom I know to be Special Agents of the Federal Bureau of Investigation.

“I am in charge of the abrasive division of the Musto-Keenan Company located at 1801 South Soto Street, Los Angeles. I—ELK—handle—ELK—all purchases and sales of industrial diamonds for the company. During the past six months I, on behalf of the Musto-Keenan Company have purchased industrial diamonds from R. L. Patrick of Duluth, Minnesota,—ELK—J. L. Hanifer of New York City, and from Hanifer and Company in Spokane, Washington. These diamonds were loose diamonds. The value of the diamonds kept in stock by the Musto-Keenan Company average between \$10,000.00 and \$15,000.00 in value. This stock is kept in the vault in the office of the company and also in a safety deposit box in the name of the Musto-Keenan Company in the

(Testimony of William John McCormick.)

Vernon Branch of the Bank of America. E. G. Pollak, Myron Haig and myself have access to this safety deposit box in which—ELK the diamonds are kept.

ELK “During the past ten months the following firms and individuals have been the principal purchasers of industrial diamonds from the Musto-Keenan Company:

- (1) “Continental Drilling Co.
- (2) “Felker Mfg. Co.
- (3) “H. H. Goodman
- (4) “Thompson Products
- (5) “Processed Diamond Bit and Tool Company

“The Continental Drilling Company, Pacific Mutual [49] Bldg., Los Angeles have purchased about \$1500.00 worth of industrial diamonds to be used, I believe, on government contracts. These purchases are supervised by Jack Wilson of that company.

ELK “The Felker Mfg. Company located at Torrance, California have purchased at least \$10,000 worth of industrial diamonds since January 1, 1941. The purchases were made by M. N. Felker who appears to be the owner of the company. These purchases were made monthly. The diamonds are used by the company in the manufacture of a diamond cutting blade.

“H. H. Goodman, whose first name is Howard, and who claims to have an office at 629

(Testimony of William John McCormick.)

South Hill Street, Los Angeles, in the Banker's Building, has purchased \$15,000.00 or \$20,000.00 worth of industrial diamonds from the Musto-Keenan — ELK — Company since January 1, 1941. I personally handled these sales which were about ten in number. I do not know what business Goodman is engaged in. I have never been in his office and the only times I have seen him have been when he came to the office of the Musto-Keenan Company to purchase diamonds. H. H. Goodman appears to be purchasing diamonds for himself rather than as an agent. He has paid for these diamond purchases with his personal check and also by cashier's check and has always appeared at the company ELK unaccompanied by any other individual. Goodman never mentioned what sort of business he is engaged in and I know nothing further concerning him.

“The Thompson Products Company have purchased about \$1000.00 or \$1500 worth of industrial diamonds from the Musto-Keenan Company during the past few months. [50] This company is engaged in defense work.

“The Processed Diamond Bit and Tool Company of San Francisco, California by Fred Roland, owner or manager, have purchased about \$800.00 worth of industrial diamonds during the past ELK two or three months. I do not

(Testimony of William John McCormick.)

know what disposition of the diamonds is made by this company.

“The above are the only firms or individuals that I now recall as having purchased diamonds in the approximate amount of \$1000.00 or more.

“We, the Musto-Keenan Company, have sold no industrial diamonds for export nor does the company have a license to export industrial diamonds. We have not been approached by any firm or individual regarding the purchase of industrial diamonds for export.

“I have read the above statement and it is ELK true. It is given of my own free will and no threats or promises have been made to me.

“ELWOOD L. KEELER.

“Witnessed:

W. J. McCORMICK,

F. B. I., Los Angeles

“F. J. HOLMES,

Special Agent, F. B. I., Los Angeles.”

At this time a statement by the defendant H. H. Goodman, dated October 15, 1941, and consisting of 9 sheets, was marked Exhibit 21 for identification.

[51]

The Witness: I saw Exhibit 21 at the office of the Federal Bureau of Investigation at Los Angeles. It is a statement signed by Mr. Goodman freely and voluntarily on October 15, 1941.

(Testimony of William John McCormick.)

At this time Exhibit 21 was admitted in evidence against the defendant Goodman only and the Court instructed the jury that it was not to be considered as evidence against the defendant Keeler.

EXHIBIT 21

was then read to the jury.

“October 15, 1941, Los Angeles, Calif.

“I, Hyman Howard Goodman, make the following voluntary statement to W. J. McCormick and Frank J. Holmes whom I know to be Special Agents of the Federal Bureau of Investigation.

“In about April or May, 1941, I was contacted by K. Takahashi of 1560 W. 58th Street, Los Angeles, who had less than a week previous returned from Japan. Takahashi told me he was engaged in the business of purchasing American dollars from Japanese presently in America who were planning on returning to Japan. Takahashi said that in payment for these American dollars he, K. Takahashi, — H. H. G. — caused to be deposited certain amounts of Japanese yen in banks in Japan. He stated that the reason for these transactions was the fact that these Japanese returning to Japan were not allowed to take back American money with them. Takahashi said that as a result of these transactions he had a large sum of American money with

(Testimony of William John McCormick.)

which he wished to purchase industrial diamonds as an investment, Takahashi said that if I would arrange for him to purchase [52] industrial diamonds he would pay me a commission of 10% for my services. H. H. G. Later he told me he would only pay me a commission of 5% because the people with whom he associated in the transaction objected to a 10% commission. In May or June, 1941, I contacted Elwood Keeler of the Musto-Keenan Company of Los Angeles. I told Keeler I was acting as agent for K. Takahashi and that K. Takahashi wished to purchase industrial diamonds. Keeler agreed to add on to the bill about 3 or 4% which was to be a commission for me. Since that time in May or June, H. H. G. 1941, I, acting as agent for K. Takahashi, made about four or five purchases of industrial diamonds from Elwood Keeler of the Musto-Keenan Co. These sales amounted to something more than \$14,000.00. On each of these sales Keeler allowed me to keep about 3 or 4% of the purchase price as my commission. K. Takahashi was usually with me when I discussed these industrial diamonds purchases with Keeler at the Musto-Keenan Company. Takahashi entered into and took part in these conferences with Keeler. Takahashi at each sale insisted that Keeler deliver the diamonds to him H. H. G. personally. On one occasion when I was present Takahashi re-

(Testimony of William John McCormick.)

requested Keeler to weigh out one lot of diamonds to see that he was getting the correct weight. Keeler complied with this request and weighed out the diamonds.

“I received about \$800.00, more or less, H.H.G., from the Musto-Keenan Company on all of the sales. From Takahashi I received—H. H. G. between \$200.00 and \$300.00 in cash as my agent’s commission. Takahashi still owes me about \$800.00 H. H. G. or \$900.00 H. H. G. in commissions of which I am to return to Takahashi [53] personally $\frac{2}{5}$ of the total on these industrial diamond transactions.

“I presumed H. H. G. that it was illegal to export diamonds without a license H. H. G. but I did not know whether or not Takahashi planned to export these industrial diamonds. Takahashi gave several different reasons for wishing to purchase diamonds. At one time in July, August or September, 1941, he told me, ‘I cannot pay for H. H. G. the diamonds until the ship gets in.’ On another occasion during this period he said, ‘I will pay you your commissions when the boat arrives.’

“I do not know the individual with whom Takahashi is associated in business, except the following: H. H. G.

“..... Takizawa, who has been with Takahashi and me on one or two of the occasions when the diamonds were picked up at the Musto-

(Testimony of William John McCormick.)

Keenan Company. I do not know his first name or address.

“Nakauchi, whose first name or address is unknown to me, has been up to my office at 629 South Hill with Takahashi during the past three months.

“On Monday, about September 15, 1941, I met Keeler on his return from Mexico. On Tuesday, the following day, Elwood Keeler, K. Takahashi, Takizawa, Nakauchi, and myself met H. H. G. in my office at 629 South Hill Street, Los Angeles, and we all discussed a diamond transaction and either at that time or a few days later Keeler delivered diamonds to K. Takahashi. There was only one meeting of business and/or group in my office.

“Although Takahashi agreed to pay me 5% commission, he has recently told me he would pay me only 3%.

“I have done business with K. Takahashi over a period of years when I was engaged in the importing [54] and exporting business. On all transactions I handled for Takahashi he paid me a commission as a buying or selling agent, on similar basis to this transaction.

“Takahashi does not know of the commission I received from the Musto-Keenan Company.

“I did not feel at the time I acted as agent in these transactions that I was violating any

(Testimony of William John McCormick.)

law of the United States but selling merchandise in the United States according to law.

“I have read the above statement consisting of eight and a fraction pages and it is true and no threats or promises have been made to me and it is given of my own free will.

“H. H. GOODMAN.

“Witnessed:

WM. J. McCORMICK,

Special Agent, F. B. I., Los Angeles

FRANK J. HOLMES,

Special Agent, F. B. I., Los Angeles.”

The Witness: On September 15, I went to the airport at Glendale. At about 4:45, I saw Goodman and Takahashi standing at the airport. At approximately 5:00 in the afternoon, the plane from Mexico City arrived and Keeler alighted from it and went into the office of the customs agent. I saw Goodman and Takahashi wait for about a half an hour at which time Keeler came out of the customs office.

As Keeler came out of the customs office, Goodman left Takahashi and went up to Keeler, talked to him, and walked with him over to the car operated by Goodman.

Takahashi was waiting at the car. Keeler and Goodman came up to the car and engaged in a conversation with Takahashi. Keeler was accompanied by his wife. Mr. and Mrs. Keeler, Goodman, and

(Testimony of William John McCormick.)

Takahashi then got into Goodman's automobile and they drove to [55] 3965 South Cherrywood Avenue. At that place, Mr. and Mrs. Keeler got out of the car and Mrs. Keeler went into the house. Keeler talked to Goodman and Takahashi for about ten or fifteen minutes, after which Goodman and Takahashi drove to 1560 West 58th Street, where Takahashi got out of the car.

I next saw Keeler on the following morning, September 16, at about 9:00. He left his home, went to the Vernon Branch of the Bank of America at 26th and Santa Fe Avenue and parked his car in front of the bank. In about fifteen minutes, Goodman drove up in his car, went over to Keeler and talked to him. Keeler then went into the bank and came out after about five minutes while Goodman stayed in his car.

Keeler then got into his car and drove it to a parking lot across the street. He then got into Goodman's car and they drove to 5718 South Baker Street where Goodman got out and went into the house. At that address Goodman was engaged in a conversation with some individual. He then left and went to 1560 West 58th Street and there he engaged someone in conversation.

Goodman came out, got into the car with Keeler, and drove away. As they were driving away, Takahashi came out of the house at 1560 West 58th Street and got into a car in which he, together with Taka-

(Testimony of William John McCormick.)

zawa and Nakauchi, went to a parking lot at 629 South Hill Street, next to the Bankers Building. They got out of the car and entered the building.

I took an elevator and went up to the 9th floor where I saw Nakauchi standing in the corridor. About an hour and a half later, Takahashi, Nakau-chi, Takizawa, Keeler and Goodman came out of the Bankers Building and were talking. They went to the parking lot where Takizawa, Takahashi, and Nakauchi got into one car and Keeler and Goodman got into the other car and drove away.

Cross Examination
of

WILLIAM J. McCORMICK

By Mr. Peterson:

The Witness: On October 14, 1941, Keeler came to my office [56] at the Federal Bureau of Investigation, Los Angeles, from the office of Musto-Keenan Co. I did not place him under arrest or tell him that he was under arrest. I talked to him at the Musto-Keenan Co. office for about two minutes and asked him if he would mind accompanying me to the office of the Federal Bureau of Investigation. He said he would be glad to and did so. He signed the statement at my office.

(Testimony of William John McCormick.)

Cross Examination
of

WILLIAM J. McCORMICK

By Mr. Cohen:

The Witness: Goodman's statement was written in longhand by myself and Goodman signed it. Goodman came up to my office willingly. He also furnished all the papers, documents, checks, etc., willingly. He gave up the papers and documents which he had. If I called him on the phone, he kept his appointment and came up to see me whenever I called him and asked him to be up at the office. He did so at all times.

Redirect Examination
of

WILLIAM J. McCORMICK

By Mr. Silverstein:

The Witness: Both Keeler and Goodman read their statements before they signed them.

Counsel stipulate that the two defendants on trial had no license to export industrial diamonds.

Direct Testimony
of
KICHIRO TAKIZAWA
(Recalled)

Through an Interpreter, Examined by Mr. Silverstein:

The Witness: I had no license to export industrial diamonds from the Secretary of State as required by the Presidential proclamation of July 2, 1940.

Counsel stipulated that if Takahasha and Nakauchi were recalled as witnesses, they would testify that they had no license to export industrial diamonds from the Secretary of State, as required by the Presidential proclamation of July 2, 1940. [57]

Direct Testimony
of
ALEX P. LE GRAND
(Recalled),

Examined by Mr. Silverstein:

The Witness: I have been a special agent of the Federal Bureau of Investigation since November 5, 1939. I saw Mr. Keeler on October 16, 1941, at the office of Musto-Keenan Co. together with special agent J. J. Maloney and we had a conversation with Mr. Keeler.

(Testimony of Alex P. LeGrand.)

“Q. What was the conversation?

A. First of all we asked Mr. Keeler if he would permit us to look at his records with reference to diamond transactions with H. H. Goodman, and he permitted us to do so. We also asked Mr. Keeler whether he had any transactions in diamonds with either Takizawa, Nakauchi or Takahashi, or any other Japanese; and he said he had never had any dealings in diamonds with any Japanese. We next asked him if any Japanese had been present during any of the times when he had dealings with H. H. Goodman, and he stated that no Japanese had ever been present at any time when he had dealings with H. H. Goodman. We then told him that a special agent of our Department had followed him to the office of H. H. Goodman sometime in September and had witnessed there his emergence from the office with Takahashi, Nakauchi and Takizawa; and that thereafter the Japanese persons mentioned had given us statements saying that they had been in the office with Mr. Keeler and Mr. Goodman at the time they purchased diamonds from Mr. Keeler. He then said that he remembered that there were some Japanese present in his office with [58] Goodman at the time he sold Goodman these diamonds. However, he said he did not know

(Testimony of Alex P. LeGrand.)

what the Japanese were up there for and he did not know that they had any connection with the diamonds. I asked him whether it was not true that Mr. Takahashi examined the diamonds at the time he showed them to Mr. H. H. Goodman. He said that that was true; that Mr. Takahashi did examine the diamonds and denied he showed the diamonds to H. H. Goodman. I then asked him if it was not true that a collection of money had been taken up from the Japanese, and after the collection of money had been taken up from the Japanese, that Goodman had wrote up a personal check which he handed to Mr. Keeler in payment of the diamonds; and he stated that that was true, that that had occurred and that a collection of money had been taken up among the Japanese; that he didn't know the amounts of the money; he didn't know what it was for; it could have been for any purpose; but he did not think it was for diamonds.

Q. Is that the substance of the conversation?

A. That is the substance of the conversation."

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"The Court: Mr. Silverstein, this last conversation is only admissible as to Mr. Keeler?

(Testimony of Alex P. LeGrand.)

Mr. Silverstein: That is all; it is just offered for that purpose.

The Court: There has been no distinction. I want to instruct the jury at this time that testimony relative to the conversation with Mr. Keeler is only binding as to the defendant Keeler, and is [59] not to be considered by you as evidence against Goodman."

At this time an additional statement by the defendant Keeler, dated October 17, 1941 and consisting of 5 sheets, was marked Exhibit 22 for identification.

The Witness: Exhibit 22 is signed by Keeler and witnessed by Le Grand. It was a free and voluntary statement.

EXHIBIT 22

is offered and admitted into evidence against the defendant Keeler only and read to the jury.

"Los Angeles, California, October 17, 1941.

"I, Elwood L. Keeler, give the following statement to Special Agent A. P. Le Grand, whom I know to be a Special Agent of the Federal Bureau of Investigation. This statement is made in the offices of the Federal Bureau of Investigation at Los Angeles, California.

"On June 30, 1941, Mr. H. H. Goodman came to my office at the Musto-Keenan Company,

(Testimony of Alex P. LeGrand.)

1801 South Soto Street, Los Angeles, California, and stated that he had a customer interested in purchasing industrial diamonds. He then bought a small amount of diamonds which he wanted to use as samples to show his customer. At this time Mr. Goodman asked me that any prices which I might quote on industrial diamonds before any other customer who might be a customer of Mr. Goodman be jacked up 5% to give him a profit. It was understood that I would bill Goodman for the real price of the diamonds.

“Several days later, Mr. Goodman came to the Musto-Keenan Company with K. Takahashi, and he and Takahashi inquired about quotations on diamonds and I showed them the diamond stock which Musto-Keenan Company then had on [60] hand. Takahashi also inquired about other grades of diamonds which Musto-Keenan Company did not have in stock, and Mr. Takahashi and Goodman asked me to obtain representative samples of these other grades of diamonds.

“Approximately July 7, 1941, H. H. Goodman and K. Takahashi again came to my office at Musto-Keenan Company and bought diamonds which are indicated on sales slip No. A-1267 dated July 7, 1941. Mr. K. Takahashi seemed to be an appraiser of diamonds and he

(Testimony of Alex P. LeGrand.)

examined the representative samples of diamonds which were purchased by H. H. Goodman on this day. At this meeting, Mr. K. Takahashi asked me some questions about the types of industrial diamonds which were on the market.

“Sometime in July, 1941, possibly toward the end of the month, a Mr. Takazawa came to my office alone and showed me a list of prices on industrial diamonds, and asked me if the prices listed therein were fair. He also asked me if I would sell him industrial diamonds and I refused to do so. I recognized the prices and the lot numbers which were on the list which Takazawa *showed* me as being similar to those which I had quoted to Mr. Goodman. I would not sell the diamonds to Mr. Takazawa for two reasons: First, I did not know Takazawa and, he being Japanese, I did not want to deal with him; and second, and chiefly, because I recognized the lot numbers and (ELK) prices as being similar to those on the list given to Mr. Goodman, and I felt that Mr. Takazawa was Mr. Goodman's customer inasmuch as this was the only quotation which was given out on that particular type, size and lot of diamonds. [61]

“About July 22, 1941, I sold the diamonds which are indicated on sales slip No. A-1275 in the amount of \$5,136.97, without including

(Testimony of Alex P. LeGrand.)

tax, to Mr. H. H. Goodman when he came to my office with Mr. K. Takahashi.

“About August 1, 1941, I sold diamonds indicated in sales slip No. A-1280 dated August 1, 1941, in the amount of \$1,617.00, without including tax, to Mr. H. H. Goodman at the offices of the Musto-Keenan Company when he came there with Mr. K. Takahashi.

“About August 11, 1941, I sold Mr. H. H. Goodman the diamonds indicated in sales slip No. A-1287 dated August 11, 1941, in the amount of \$2,210.00, without including tax. This transaction took place when Mr. Goodman came to the offices of Musto-Keenan Company with Mr. K. Takahashi.

“About September 4, 1941, Mr. H. H. Goodman came to the offices of Musto-Keenan Company with Mr. K. Takahashi and Mr. Takazawa, and at that time Mr. Goodman purchased the industrial diamonds indicated on sales slip No. A-1298 dated September 4, 1941, in the amount of \$3,731.00 without including tax.

“Several days before this meeting took place, Mr. Goodman, in (ELK) company with Mr. Takahashi, had discussed the purchase of \$11,055.00 worth of industrial diamonds and had left with me a deposit of approximately \$1,000.00 as evidence of good faith before I would order the diamonds from Jim Hanefen

(Testimony of Alex P. LeGrand.)

of New York City. The transaction of \$11,055.00 was conditional (ELK) on the fact that I would accept the return of diamonds indicated in lots Nos. 2854, 2845, and 2856, which total the amount of \$1,463.43, without including tax. While not definitely agreed upon, there was [62] a request that I also accept the return of diamonds indicated in lot No. 1850, amounting to 200 karats, and lot No. 1853, amounting to 200 karats. However, when Mr. Goodman came with Mr. Takazawa and Mr. Takahashi to conclude this deal, Mr. Goodman did not have enough money to take the whole order of diamonds of \$11,055.00. Instead, he purchased order No. A-1298 dated September 4, 1941, in the amount of \$3,731.00, and I did not accept the return of any diamonds at this time. At the conclusion of this deal, Mr. Goodman still had a deposit of approximately \$1,000.00. Goodman stated that he would pay for the remainder of the diamonds by the time I returned from a vacation which I was to take shortly thereafter. Mr. Goodman asked me the day I expected to return from my vacation in Mexico, and upon my return on September 15, 1941, he met me at the airport with Mr. Takahashi. Mr. (ELK) Goodman drove my wife and me home and asked me to meet him on the following day to complete the sale of the diamonds.

(Testimony of Alex P. LeGrand.)

“On September 16, 1941, I went to the Vernon Branch of the Bank of America and got the diamonds which Goodman was going to purchase that day, from the safety deposit box of the Musto-Keenan Company. Mr. Goodman then met me outside of the bank and took me in his automobile to a place where he said Mr. Takahashi roomed. There he made inquiry for Mr. Takahashi while I remained in the automobile, and when he returned he told me that Mr. Takahashi was not there.

“We then went to Mr. Goodman’s offices at the Bankers Building, Los Angeles, California, where several minutes later Mr. Takahashi, Mr. Takazawa, and a Mr. Nakauchi arriv- [63] ed, and Mr. Goodman then discussed the purchase of the industrial diamonds which I had obtained at the safety deposit box. I opened the packages of diamonds and Mr. Takahashi examined them. I then wrapped the diamonds and gave them to Mr. Goodman. The Japanese took up a collection of money among themselves, which they gave to Mr. Goodman. I do not know the exact amounts of money which the Japanese present gave to Mr. Goodman. Mr. Goodman drew his own personal check which he gave me in payment for the diamonds. I do not remember the amount of the check which Mr. Goodman gave me.

(Testimony of Alex P. LeGrand.)

“As part of this transaction, I took back the diamonds indicated by lots Nos. 2854, 2845, and 2856, amounting to about \$1,463.40, which I credited to the total amount of \$11,055.00, and I also accepted the return of lots (ELK) Nos. 1850 and 1853, in the amount of about \$1,570.00, which I also credited in payment of the \$11,055.00. The check which Mr. Goodman gave me at this (ELK) time was of sufficient amount to bring the total purchase price of the diamonds up to the actual amount which I was charging Mr. Goodman for the diamonds, plus the 5% markup which I placed on the diamonds at the request of Mr. Goodman, who wished to have this 5% as his profit.

“About September 29, 1941, Mr. Goodman came to my office and took back the check which he had given me at his office on September 16, and in exchange gave me a check in the amount of about \$7,000.00, which, together with (ELK) the deposit which he had previously given of about \$1,000.00, paid in full for the diamonds which had been sold to him on September 16, with the exception (ELK) of an amount of [64] \$358.75. At this time he asked me if he might have a few days in which to pay the \$358.75 and I agreed to this. He returned a few days later and gave me a check in the amount of \$358.75, thus paying in full for the diamonds

(Testimony of Alex P. LeGrand.)

sold on September 16, 1941, at the correct prices which Mr. Goodman was supposed to pay for these diamonds.

"I have read the preceding statement, consisting of four pages, and I sign it because it is true as far as I can remember.

(Signed) "ELWOOD L. KEELER.

"Witnesses:

"A. P. LE GRAND, (signed)

"A. P. LE GRAND,

"Special Agent, Federal Bureau of Investigation U. S. Department of Justice Los Angeles, California.

"J. J. MALONEY, (Signed).

"J. J. MALONEY,

"Special Agent, Federal Bureau of Investigation U. S. Department of Justice Los Angeles, California.

"Upon further recollection I wish to make the following addition to the statement which I have made above: Sometime between July 7, 1941 and July 22, 1941, Takazawa came to my office and showed me a list of diamonds and lot numbers which I recognized as being similar to those which I had quoted to Goodman. He asked me to sell him about \$3,000 worth of the diamonds and I told him I would. Immediately after Takazawa left I phoned Goodman and asked him to come to my office. When he arrived

(Testimony of Alex P. LeGrand.)

I told him that Takazawa had been in the office and gave an order for diamonds similar to the one which I had quoted to Goodman. Goodman said that he did not know Takazawa. At this meeting I made a verbal understanding with Goodman that I would not [65] deal with any Japanese except through him. I ordered the industrial diamonds for Takazawa anyway because I thought that when they arrived I would tell (ELK) Takazawa that he would have to do business through Goodman and I thought that there would be no question about Takazawa buying the goods from Goodman because they would be at the same prices that I quoted him. Very shortly thereafter Takahashi came to the office with Goodman. I don't remember whether I told Takahashi that Takazawa had ordered some diamonds or whether he had learned from some other source, but he told me that he could give about \$30,000.00 worth of business in industrial diamonds if I would do no other business with any other Japanese unless I did it through Goodman. I then told Takazawa that he could not do any business in diamonds with Musto-Keenan Co. unless he did it through Goodman. I don't remember whether I phoned him this information or whether he came to the office and I told him there. (ELK)

(Testimony of Alex P. LeGrand.)

Takazawa authorized me to sell the diamonds he had ordered to Mr. Goodman and I did this.

(Signed) "ELWOOD L. KEELER.

"Witnesses:

"A. P. LE GRAND, (signed)

"A. P. LE GRAND,

"Special Agent,

"F. B. I., Los Angeles, Calif.

"J. J. MALONEY, (signed)

"J. J. MALONEY,

"Special Agent,

"F. B. I., Los Angeles, California."

Close of Government's Case

"Mr. Silverstein: The Government rests."

* * * * *

"Mr. Peterson: The Defendant Keeler now moves, at the [66] close of the Government's case in chief, that the Court instruct the jury to return a verdict of not guilty against the Defendant Keeler, as charged in the indictment, on the ground they have not sufficient evidence to warrant the case going to the jury.

"Mr. Cohen: The Defendant Goodman interposes the same motion.

The Court: Motion denied.

Mr. Peterson: Exception allowed to each defendant?

The Court: Exception allowed to each defendant."

SECOND EXCEPTION. [67]

TESTIMONY FOR THE DEFENDANTS

Direct Testimony
of

ELWOOD L. KEELER

(On His Own Behalf)

Examined by Mr. Peterson:

The Witness: I am Secretary-Treasurer and Manager of the abrasive division of Musto-Keenan Co.

At the time I became employed by the Musto-Keenan Co. in December, 1922, the company was in the marble and tile business. In connection with that business certain devices or machinery, known as cutting wheels, are used. These are various types of grinding wheels for cutting and polishing marble. I became the purchasing agent about a year later and naturally purchased many of them.

In connection with these cutting wheels, there are certain substances used known as industrial diamonds. These are used to true the edge of the wheel so as to produce a finer finish. The wheel is made of various types of aluminum oxide and silicon carbide bound with clays. It is known in the trade as carborundum.

(Testimony of Elwood L. Keeler.)

It is rather difficult to translate that into clearer English. They are specialty articles. They are an improvement over the old original emery wheels used for cutting, grinding and polishing. This is part of the use of industrial diamonds, but there are many other uses. They are used for the manufacture of diamond saws, boring and lapping. In fact, every day there are new uses found for them and it is difficult to recall them all. They are used in a variety of mechanical work, machine shops and practically all industrial firms.

The difference between an industrial diamond and the kind of diamond handled in the jewelry stores is that the jewelry store diamond is all carbon, a crystalline carbon, which is very clear. In the industrial diamonds, there are two kinds, carbon and Bortz. Carbon is black and entirely different from Bortz. Bortz comes [68] in various shapes, kinds, types and hardness. Not all diamonds are of the same hardness. It is rather intricate to go into details of the various qualities.

Industrial diamonds wouldn't do to wear on a ring on a finger. There are some industrial diamonds that are on the shade of gem stones, but they show the carbon spots and don't polish well. Our company is very busy on abrasive work and increasing all the time on account of the defense program. Practically all of our items are used in the defense program and all come under priorities.

(Testimony of Elwood L. Keeler.)

There are very few large suppliers of industrial diamonds. There are one or two outside of New York City, but New York City is the headquarters and is becoming more and more the headquarters for industrial diamonds. Originally they used to come, and I believe some still come, from Amsterdam and London to New York. We never purchased any from foreign countries, but mostly from New York. The industrial diamond is not found in the United States, although a few have been found in Arkansas, but none of them have proved satisfactory. Practically 99.9% are brought in from Brazil or South Africa, mostly from Africa. Apparently the English have control of the importing business of what is known as the Diamond Syndicate.

My first contact with Goodman was over the telephone a couple of weeks or so before the first sale that was made. He told me that he had seen our name in the telephone book and that he had a customer who wished to purchase industrial diamonds. He came to our place while I was away. After my return he came again and we discussed the purchase of diamonds. He asked me for prices and said that he would add to my quotations in order to make a profit for himself of 5%, 10% or 15%, for he was only acting as broker. We agreed that on all sales to his customer he would add 5%. He then took some samples with him for which he paid \$13.91.

Later he called up and said that the samples were not satis- [69] factory and that he was bringing his

(Testimony of Elwood L. Keeler.)

customer, a Japanese, to look at more diamonds. Three or four days later, he came with Takahashi. I showed him some of the diamonds in our own vault but they were not satisfactory. I then took them to the bank where I took more diamonds out of our safety deposit box and showed them various diamonds. The quality still did not seem to satisfy them. I asked them what price they wished to pay. They gave me a certain stipulated price which they would pay; I believe it was between \$3.00 and \$12.00 a carat. Industrial diamonds are sold by the carat. However, they did not seem to know much about diamonds and what they wanted.

So they gave me an order for some representative samples, which I immediately ordered through Mr. Hanifen in New York, who was in the business of selling industrial diamonds. The transaction is reflected by the first cash sale. When the diamonds arrived, I notified Goodman, who then came with Takahashi and took delivery of them. He paid for them at the time and the sale was entered up by myself in a separate cash book we keep for the abrasive division.

They came back in a few days, as reflected in our record book of sales, and ordered same representative amounts of samples. They didn't re-order all the samples, but picked out certain types and gave me the order. We again obtained the diamonds and billed them out in the regular order.

(Testimony of Elwood L. Keeler.)

On each occasion we made out two bills, in order to protect Goodman. One was the actual bill and represented the amount received by us and the other bill, which was presented to Goodman in the presence of the Japanese, was for a larger amount and included Goodman's commissions.

Takahashi complained about the quality of the second order and said that he didn't like their looks, but I told him that at the price he was paying it was impossible to get better goods. I [70] did not ask him for what purpose they were going to use the diamonds but told him to submit them to anybody who knew prices. I told him I would bring out a few samples of better goods but they would be more money. When he saw these, in the second order, he liked the appearance of them much better and was not satisfied with the ones he had already purchased. Some of the stones in the second order *seem* to please Takahashi more than the others and he started ordering more of that type.

So from then on he started ordering. The orders were for the higher priced diamonds. The last large order of about \$14,000 or \$15,000 was in August of this year. Takahashi insisted that I personally select the quality in the East. I told him that a trip East was too expensive and I would accept such a large order only if a substantial deposit was made so that the goods would be taken when they arrived. After several conversations they fi-

(Testimony of Elwood L. Keeler.)

nally put up a deposit of \$1,000 and promised to take the entire lot when it arrived.

Of course, between times Goodman and myself had several conversations, and it looked as if the money would be produced; and as a result I made arrangements to go East. I had a verbal order for the carats reflected in the last two sales. I then flew by plane to Chicago where I selected the diamonds which were shipped to the Bank of America by air-express. I left Friday night and was back Monday morning. The order for the diamonds was the sole purpose of my trip.

As soon as I returned I notified Goodman and then went with him, Takahashi and Takizawa to the bank and showed them the diamonds. They didn't take any of them at that time, but a few days later Goodman called up and said he would be down to take delivery of them. I went to the bank and brought the diamonds to our office. They came to our showroom, looked at the diamonds, but only took part of them, for which Goodman paid me. I believe the order was [71] for 700 carats and was the second from the last sale.

I then left for my vacation with Mrs. Keeler to Mexico City and returned by airplane in about ten days. I dropped Goodman a card from Mexico City, and Takahashi and he waited at the airport at our arrival. Before I left, I had naturally insisted that delivery be taken of all the goods I had ordered for

(Testimony of Elwood L. Keeler.)

them. Goodman offered to meet me on my return. When I arrived, I didn't expect Takahashi; I did expect Goodman.

We all drove to my home together, Mrs. Keeler went into the house and we talked for a few minutes outside. I told them that I was not going back to the office for a few days, but they said they had the money and would like to clean up the deal; finish taking delivery of the diamonds. So we made a date to meet in Goodman's office around 10 o'clock the next morning after I could go to the bank and get the diamonds.

The following morning I got the diamonds from the bank and at Goodman's suggestion, took them to Goodman's office. The three Japanese also came then. I put the diamonds on a table and there was some discussion as to raising the price to take care of them and also about returning some of the previous shipments which were not of as good a quality. Finally, I took back the various lots about which they complained, amounting to around \$2,500.00 to \$3,000.00. They then took the diamonds that I had brought and Goodman gave me a check for the full amount. We did not use this check but gave it back to Goodman a few days later when he gave us a check for the correct amount.

The circumstances under which my statement of October 14th was given were as follows: Mr. Holmes and Mr. McCormick came down to the office and asked to see me. When McCormick came in he

(Testimony of Elwood L. Keeler.)

flashed his card that he was from the F. B. I. and said he would like to know if I would come up to the office and talk to him. I said yes. They wanted me to go in their car, while I [72] wanted to follow in my own car. Finally they said, "Well, all right." But Holmes decided that he had better go with me and then went with me in my car.

When I got up to their office, they started questioning me about whom I had sold the diamonds to. I was there by myself. It was my first experience of anything of this type. Naturally, to be frank, I was just frightened; I was scared to death because I didn't know what happened or what was wrong. The fact that they didn't even let me drive up alone, while they didn't say I was under arrest, the fact that they stayed right with me all the time; I wasn't out of their sight—and I believe it was about 1:00 o'clock when they started taking down notes, and finally I believe it was at 1:00 o'clock they suggested that we go out and get some lunch. We went over across the street and got some lunch. Then I came back with them again; and I don't remember whether the statement was all written after lunch or whether it was started before lunch; but, as I say, I was frightened, and I really didn't know what I did say, plus the fact it was very warm; I had been suffering from dysentery; I wasn't feeling well.

Shortly after that, I believe just a day or two later, the second statement was taken. I believe

(Testimony of Elwood L. Keeler.)

that Mr. LeGrand came down at that time with Mr. McCormick and started asking me some more questions. So I asked that Mr. Pollack, our Vice-President and General Manager, come in. I started to give my story and they said "Well, let's go up to the F. B. I. office and finish it up there." So they were not down at the office very long.

Mr. Pollack did not go with me to the F. B. I. office when the second statement was given. As I recall, the second statement was taken down, a part of it was taken down at the office, but the whole statement was typed. It was taken down by the stenographer and typed afterwards. It was after 7 o'clock that night before I left there. The last part was typed by Mr. Le Grand. [73] This is a post-script and is in different handwriting.

I know I was there all afternoon, but I don't remember whether also some part of the morning or not. It was all afternoon at least, and I left at seven o'clock that night because I know that it was 8 o'clock by the time I got home.

I never had any conversation with the Japanese or anybody else relative to the industrial diamonds being exported to Japan and there was no understanding that that would be done.

I had no intention or purpose that any of these industrial diamonds would be exported to Japan or elsewhere and I entered into no agreement with anyone for that purpose.

(Testimony of Elwood L. Keeler.)

Cross Examination

By Mr. Silverstein:

The Witness: Prior to the dealings with the defendants in this case, Musto-Keenan Co. had sold industrial diamonds for 12 years. We never sold any of the larger firms or major concerns any amount of diamonds that compared with the amount that we sold to the defendants in this case. This didn't seem peculiar or strange to me for the reason that this year all lines of our business are increasing. There are several items, not only diamonds but other items, that we sold more of this year than the last few years put together and to people that were not large buyers or buyers at all. I didn't inquire of Goodman the extent of his financial ability because I told him that it would have to be for cash. When Goodman came with the Japanese it did not appear peculiar to me because there are plenty of Japanese in this country.

When I first did business with Goodman, he told me that he was buying for a customer. Then he appeared with Takahashi and thereafter Takahashi seemed to be the one interested in the diamonds who took the more active part. Takahashi did all the [74] questioning about the diamonds and their quality. As it went on the sales became larger.

Takizawa came alone at the beginning and had with him a copy of the price list of industrial diamonds which I had given Goodman. Then he came with Takahashi and Goodman.

(Testimony of Elwood L. Keeler.)

Up to that time I had not sold any industrial diamonds to Japanese. I asked Goodman or the Japanese what they were going to use the diamonds for. These diamonds are used for various industrial purposes.

I knew at that time that a proclamation had been issued by the President of the United States against the exporting of industrial diamonds without a license from the Secretary of State, our company having had knowledge about it immediately after the proclamation first came out.

My suspicions were not aroused and I didn't consider it necessary to inquire into the purpose that the stones were going to be used for. Even on the second and third occasions, my suspicions were not aroused.

The sales of diamonds to the defendants kept on increasing until the meeting in Goodman's office on September 16, when the largest order was put through. Whenever any of the sales were consummated, there was at least one Japanese present.

When I said in my statement of October 14 that no one was present on any of the occasions, I was scared to death. I felt that I had nothing to worry about, but on the other hand I didn't know what was wrong when I was examined by the Federal Bureau of Investigation, I gave the second statement after the agents had told me that they knew that the Japanese had visited my place and

(Testimony of Elwood L. Keeler.)

about the sales. I was very nervous at the first instance when I gave the statement of the 14th [75] right up to the time when I gave the statement of October 17.

“Q. As a matter of fact, you didn’t endeavor to give the agents the truth, or anywhere near the truth, until they had told you that they knew about the Japanese visiting your place and of the sale; isn’t that correct?

A. Well, that was the second statement.

Q. Well, whenever it was? A. Yes.

Q. At the same time or otherwise. That is a fact, isn’t it? A. Yes.

The Witness: In my statement of the 14th, I listed Continental Drilling Company, Felker Manufacturing Company, Thompson Products, and the Diamond Bit & Tool Company among several large concerns using industrial diamonds. Felker is the largest customer of this commodity and uses it for manufacturing diamond saws. Outside of Felker and Goodman, these other concerns purchased about \$1,000 worth of stones from us each year.

When Goodman came down to see me, I understood that he was acting as agent and he told me that he had a customer who wanted to buy industrial diamonds. When I said in my statement of October 14 that Goodman was acting for himself, I did not believe that Goodman was acting for himself.

(Testimony of Elwood L. Keeler.)

The amounts purchased by Goodman or by the Japanese through Goodman were not phenomenal quantities. Felker, which is a large company, had purchased more than that.

I didn't give any consideration to Takahashi as to what kind of business he had or what he was going to do with the goods. I was not interested. Nothing arose that caused me to be interested. We had no other Japanese customers.

Takahashi and Goodman told me that they had no knowledge [76] of diamonds but Takahashi kept talking about the quality not being good enough and wanted a better price. He examined the diamonds, looked at and sorted them, and then said that they should be of better quality. At no time did Takahashi say for whom he was purchasing them or what he wanted to use them for.

Redirect Examination

By Mr. Peterson:

The Witness: During the past year, Musto-Keenan Co. sold to Felker about \$15,000 of industrial diamonds. Felker began buying from us about 11 or 12 years ago. We are selling considerable to the U. S. Government and their subsidiaries today on defense products.

At this time two character witnesses testified for the defendant Keeler.

Direct Testimony
of

W. A. FELKER

Examined by Mr. Peterson:

The witness first gave character testimony on behalf of defendant Keeler.

The Witness: My company has purchased industrial diamonds from Musto-Keenan Co. through Keeler for about 12 years. In the last couple of years we purchased about \$24,000 worth.

Cross Examination

By Mr. Silverstein:

The Witness: We have had considerable business dealings with Musto-Keenan Co. who distributes all of our products.

At this time two more character witnesses testified for the defendant Keeler.

Direct Testimony
of

HYMAN HOWARD GOODMAN

(On His Own Behalf)

Examined by Mr. Cohen:

The Witness: I am 38 years old and was born in Butte, Montana. I have lived in Los Angeles on and off since 1919. In 1936, I went into the import-export business. [77]

I first became acquainted with Takahashi in 1937 at the office of my company, Inter-Ocean Traders. I saw him afterwards several times and spoke to him about business at my office. In 1941, Mr. Takahashi called me and told me that he had returned from Japan. I asked him to come up, which he did.

At my office Takahashi told me that he had a sizable sum of money and wanted to open a business here. He said that he wanted a warehouse and office, that he was going to buy a lot of heavy machinery, woolens, rags, and industrial diamonds. He said that he was particularly interested in getting women's old silk stockings which he was going to dethread and sell as thread to mills in the United States. He said that he was going to be in business with his nephew who was in the fruit business here. This was sometime in the middle of May. I did nothing about it at the time because I left for Montana on May 22.

After my return on June 18 Takahashi came to my office by appointment. He asked again about

(Testimony of Hyman Howard Goodman.)

renting a warehouse and the other matters and whether I had found out about the different items, including industrial diamonds. I said I would find out from a wholesale jeweler in the building and let him know.

I had never heard of industrial diamonds before, so I went to a wholesale jeweler on my floor in the Bankers Building. He told me that industrial diamonds were not regular commercial diamonds used by jewelers but that if I looked in the classified directory, I would probably locate a firm handling them.

I found Musto-Keenan Co. in the telephone directory and called for information. I was told that a Mr. Keeler was in charge of the department and that he was out of town for a few days. Up to that time I had never heard of Mr. Keeler. A few days later, I called Keeler on the phone and told him I had a [78] customer who was interested in industrial diamonds. He asked me what type and style but I answered that I knew nothing at all about industrial diamonds and would like to get a general idea of the prices, samples, etc. He suggested that I come over to see him at the office.

I met Keeler on June 30 at his office where I told him again that I knew nothing about diamonds, but that I had some Japanese buyers who I would bring over later, but in the meantime I wanted to make arrangements with Keeler and take some samples to the buyers.

(Testimony of Hyman Howard Goodman.)

I told Keeler that during the previous fall I had purchased some women's silk stockings for Takahashi to be shipped to Japan and that Mr. Takahashi at first agreed to pay me about 10% commission at that time, but then paid me much less. I told Keeler that as soon as Takahashi finds out where he can get the diamonds he will start cutting me down on commissions, and therefore I would like to arrange for a reasonable commission on these diamonds for which I could look to him—Keeler—so that if Takahashi cuts me down, I should have some sort of protection for my efforts.

Keeler answered that they do not give commissions, but in the usual course of business where customers are sent by other firms, they arranged a differential of about 4 or 5% between the gross price and the list price. We then arranged for this gross and list price on all billings.

At about the end of June I took Takahashi from his home where he had an office on West 58th Street to meet Keeler at Musto-Keenan Co.'s office.

I told Keeler that Takahashi was my customer and that he would like to see more samples in addition to the \$15.00 or \$16.00 worth of samples which I had bought previously. If they were [79] satisfactory, Takahashi would consider placing an order for industrial diamonds. Keeler said that he did not carry a full stock at the warehouse and would arrange with us to go to the Bank of America

(Testimony of Hyman Howard Goodman.)

where the stock was kept in a vault. We went to the bank where Keeler took the diamonds out of the vault and showed them to Takahashi and myself in open view of everybody.

Takahashi said that he didn't think the quality was exactly what he wanted and he asked Keeler if he would order a little better quality. Takahashi never said to Keeler or myself that he intended to ship these diamonds to Japan or that he had a customer in Japan to whom he intended to ship diamonds. Takahashi never gave me the names of any Japanese firms to whom he intended to ship industrial diamonds.

After that conversation, Takahashi purchased from Keeler diamonds for about \$300.00 and then there were also subsequent orders.

After the second purchase, Takahashi called me and asked me whether a certain Japanese, Takizawa, had contacted Keeler through me. I told him that I did not know Takizawa and that I knew nothing about Takizawa having contacted Keeler. I then arranged with Takahashi to go with him to Musto-Keenan Co. and talk to Keeler about it. Shortly thereafter Keeler called me and asked if I had sent a Mr. Takizawa to him, because Takizawa had a price list which was the same as Takahashi's. I told him that I was coming over the next day with Takahashi to talk about it.

The next day, I went over and picked Takahashi up at his home and took him to Musto-Keenan Co.

(Testimony of Hyman Howard Goodman.)

and had a conversation with Keeler. Keeler told us that Takizawa had come to his place with a list similar to the list that we had and had ordered merchandise from that list. Keeler presumed that Takizawa was associated with Takahashi or myself and on that basis he had taken the order and told me about it. Takahashi then said that Takizawa was one of his associates and that he could not understand why Takizawa had [80] ordered merchandise without him. Keeler then replied that he would prefer that Takahashi and Takizawa, inasmuch as they were associated, purchased material together and credited me with the sales, so that there would be no friction between the two.

About three or four days later, Takahashi asked me to take him to Musto-Keenan Co. because Takizawa would be there and the matter would be straightened out. I drove Takahashi to Musto-Keenan Co. and found Takizawa waiting for us. That was the first time I met Takizawa. This was about the middle of July. Takahashi or Takizawa then purchased some diamonds.

Generally I gave my check to Musto-Keenan Co. and Takahashi or his associate gave me the money to make good the check. Sometimes they paid by cash. The cash was counted out on the table and credited to me by Keeler. Whenever there was a check, I gave my check to Musto-Keenan Co. for the gross amount and later I would exchange that

(Testimony of Hyman Howard Goodman.)

for a check in a lesser amount, which was the customer's list price less my commission.

At one time I gave Keeler my check for \$7900.00 which he gave back to me a week later when I gave him my check for \$7000.00 and a few days later I gave him back the balance of \$350.00.

Before Keeler went to Mexico, there had been an order of diamonds that I had arranged which had not yet been taken up. Takahashi and Takizawa did not have sufficient money to take up the shipment before Keeler left for Mexico, but they said that they would have sufficient money to take up the balance of that merchandise the moment that Keeler returned from Mexico. Keeler then made arrangements to let me know when he got back from Mexico.

I received a card from Keeler saying that he would be back [81] on a certain day, I believe on a Monday. Takahashi and I met Keeler at the airport. I took Mr. and Mrs. Keeler and Takahashi to Keeler's home in my automobile. In front of Keeler's house Takahashi said that he was prepared to take the merchandise the next morning, but Keeler said that he was still on a vacation and had instructions not to return for another few days and therefore did not want to go back to the office.

However, Keeler wanted to get the money and deliver the merchandise. He said that he would go down to the bank where the merchandise was in the vault and close the transaction. I suggested that

(Testimony of Hyman Howard Goodman.)

they come to my office to close the deal and it was so arranged.

I met Keeler at the bank the next morning where Keeler got the diamonds. I then took him in my car to Takahashi's home in order to pick up Takahashi. When Takahashi came out of his house, he told me to go ahead and that he would come in a car in which were Messrs. Nakauchi and Takizawa were then driving up. I then drove Keeler to my office.

At my office there were present Keeler, Nakauchi, Takizawa, Takahashi and myself. This was about September 16th when the \$7900 check transaction took place. This was the last purchase.

I never met Takahashi, Takizawa, Keeler or any of them at night or at any other place than those mentioned here.

The entire amount of commission which I received from Takahashi and his associates was a check for \$268.15. That check bounced but Takahashi made it good. I also received commissions from Musto-Keenan Co. amounting to approximately \$700 or \$800.

When Takahashi and Takizawa were together their conversations were in Japanese which I do not understand.

I never entered into an agreement or understanding with Takahashi, Takizawa, Nakauchi, Keeler or anyone else to export [82] diamonds to Japan. I did not know that Takahashi had intentions of send-

(Testimony of Hyman Howard Goodman.)

ing diamonds to Japan without a license. It was not discussed with me. Takahashi did not tell me that he had no license nor did he ask me to obtain one for him. I never attempted to obtain a license to export diamonds to Japan.

At this time three character witnesses testified for the Defendant Goodman.

Cross Examination
of

HYMAN HOWARD GOODMAN

By Mr. Silverstein:

The Witness: I was associated in business with a company formed by Takahashi and known as the Tio Bussan Company. That company ceased doing business approximately March 27th of this year. I knew that Takahashi had been in the import-export business and that he had been established here for a number of years in some kind of curio store. I knew that Takahashi exported women's stockings a year or two ago, in the fall of 1939. I told Keeler that I had purchased some women's silk stockings from Takahashi and the details of the commission, but I cannot remember distinctly that I told Keeler that Takahashi had exported them. I told Keeler the first time that I purchased the \$13.00 item that I was an agent for a Japanese, but I did not mention the name. I introduced Takahashi to Keeler on the next occasion.

(Testimony of Hyman Howard Goodman.)

I did not ask Takahashi what he was going to do with these industrial diamonds because Takahashi had indicated to me that he was going to establish himself in a permanent business here, for the duration of the difficulties, at least. Takahashi and I did not discuss the purpose of buying these diamonds at all. I did not think it unusual for Takahashi to buy \$15,000 or \$20,000 worth of industrial diamonds, because Takahashi claimed to have a great deal of money that he had to invest in something, [83] and it seemed like it might be a wise investment to buy some item that would not lose its style or become outmoded, would have a ready market, and would not fluctuate very much in price. There was no way of knowing whether Takahashi had a lot of money, because when he bought the silk stockings I thought he did not have any money and then he went ahead and bought approximately \$8,000 to \$12,000 worth of stock.

I knew that on occasions several of Takahashi's checks came back and that my check came back. I knew that Takahashi had brought into the picture other Japanese whom I did not know previously. I knew that on some of these occasions checks were given by other Japanese who were not there when the transactions were taking place.

When Takahashi came to me previously, I believed that he had a tremendous yen fund and also that he had a yen fund on which he could raise all the American dollars that he wanted provided his

(Testimony of Hyman Howard Goodman.)

associates would get the money. I felt that he had plenty of funds with which to buy American dollars and that the reason he was not providing American dollars quickly enough was because he was not getting sufficient facilities as quickly as he expected.

I never asked him what he had done with the diamonds or why he did not sell them. Takahashi did not say anything about a license. I had never heard the words "industrial license" before and I had no knowledge as to that. Keeler never mentioned a word about an export license.

In my statement I said that Takahashi gave several reasons for purchasing diamonds and said at one time, "I can not pay for the diamonds until the ship get in." Every time it came to pay money Takahashi had various excuses and I did not attach any particular significance to that remark any more than to any other excuses. I figured that he was just stalling. The same [84] applies to another occasion when he said "I will pay your commissions when the boat arrives."

I received commissions of less than \$300.00. My entire commissions from Takahashi would have been \$896.00 less $\frac{2}{5}$ or approximately \$500.00. I did not receive my commissions over a period of about two months and upon the seizure of the diamonds and the arrest, I naturally inferred that I would never get my commissions.

(Testimony of Hyman Howard Goodman.)

My first actual business with Takahashi was in the fall of 1939 although I had known him since 1937.

“The Court: You testified, I believe, that when you first went to see Mr. Keeler about these industrial diamonds and told him that you had a customer that you were representing, and you say that you told him who it was at that time?

The Witness: I told him that it was a Japanese gentleman.

The Court: And you asked Mr. Keeler to arrange a price so that he could pay you a commission?

The Witness: That is correct.

The Court: What did you tell him was the reason for that?

The Witness: I explained to him that in previous dealings with Mr. Takahashi, that immediately he found out where the source of supply was, that he would start cutting down whatever commission that he had agreed to, and that eventually he would have the commission down to where it wouldn't pay me for my efforts, and that I would consider that I must have some sort of a protection in the form of a commission from the seller's side.

The Court: Well, you told him about the silk stockings experience, didn't you?

(Testimony of Hyman Howard Goodman.)

The Witness: Yes.

The Court: What did you tell him about that? [85]

The Witness: I told him that I had at another occasion purchased approximately 140 tons of silk stockings; that the price of silk stockings at the time I began to purchase them was set somewhere around \$120; that I had by maneuvering, and so forth, and the market was rather, you might say flooded, or there was a considerable amount of supply, greater than the demand, and I was able to get it down around \$80. When I asked Mr. Takahashi what he would pay me if I would get it at \$80, he told me he would pay me 10 per cent, which would be \$8.00 a ton. When he made the first purchase he paid me only \$2.00 a ton. When he got the last 30 tons he purchased, he cut it down to 50 cents; and I felt that any business that I would do with Mr. Takahashi in regard to industrial diamonds, regardless of what he promised me, that he would start cutting me down on my commissions, and that I wanted a fair protection from the seller's side.

The Court: Did you tell Mr. Keeler what Mr. Takahashi was doing with these stockings?

The Witness: I don't believe I did.

The Court: He didn't ask anything about that?

(Testimony of Hyman Howard Goodman.)

The Witness: I don't think he was interested in that.

The Court: He wasn't interested in it, about buying thousands of dollars worth of silk stockings, what he was doing with them, or anything?

The Witness: Of course, I can't recall any conversation relative to that.

The Court: These silk stockings were exported, weren't they?

The Witness: They were exported, dethreaded, made into men's silk hose and re-imported to this country.

The Court: So when you acted as agent for him at that time you knew that he was exporting the silk stockings?

The Witness: I was in full knowledge.

The Court: Yes; you knew it at that time. [86]

The Witness: That is correct.

The Court: At that time he kept cutting down, kept cutting down your commission?

The Witness: That is correct.

The Court: You figured that from these dealings with him, that he would do the same thing?

The Witness: That he would do the same thing, yes.

The Court: Yet you had no suspicion that these things were to be exported?

(Testimony of Hyman Howard Goodman.)

The Witness: At the time of the silk stockings——

The Court: No, these industrial diamonds.

The Witness: I had no suspicions because there couldn't—had there been any suspicion in my mind I would not have had to worry about him cutting down my commission.

The Court: You knew at the time that there had been an embargo on shipments of a good many things to Japan, did you not? That was a matter of common knowledge?

The Witness: That was a matter of common knowledge, that there was an embargo on some things.

The Court: A man that had just recently come from Japan approached you about a large purchase of industrial diamonds and you didn't think a thing about it so far as there being any law violating involved; I am asking that question.

The Witness: In consideration of other conditions, I did not.

The Court: That is all."

Redirect Examination
of

HYMAN HOWARD GOODMAN

By Mr. Cohen:

The Witness: In my statement where I said, 'I presumed it was illegal to export diamonds', when

(Testimony of Hyman Howard Goodman.)

he wrote that, he put that in, I tried to change the wording around so that it would mean that I presumed at the time. I had a splitting headache all night the night before.

The reason why I was not suspicious was that in view of Takahashi's wish to rent a warehouse and to go into a domestic business requiring heavy machinery, rags, women's stockings, etc., in view of [87] all those conditions, I had every reason to believe and did believe that he was permanently settled here for some time.

Recross Examination
of

HYMAN HOWARD GOODMAN

By Mr. Silverstein:

The Witness: I had every reason to believe that Takahashi had funds and the availability for converting them in time to make payments for the industrial diamonds. There is no way of stating in what period of time he might be able to convert a great deal of yen into American dollars. That would vary according to his ability to convert the yen.

(Testimony of Hyman Howard Goodman.)

Examination
of

HYMAN HOWARD GOODMAN

By the Court:

The Witness: I was given to understand that Takahashi was converting Japanese money into American dollars. I got that impression from what he told me. My impression was rather vague, but I believed that was the implication of his words. He was going to use the funds to purchase not only industrial diamonds but everything else.

What the Japanese were doing was transferring Japanese yen to the United States through exchange and using the American dollars for the purchase of diamonds. These American dollars represent funds received from the people in the United States and not from overseas. He was receiving dollars and giving in exchange yens in Japan. That was the source of some of his American dollars.

Direct Testimony
of

ROBERT MACKAY,

Examined by Mr. Cohen:

The Witness: I am associated with Goodman in some brokerage deals and make my office with him. I was present when Takahashi was in the office this year and heard the conversation between Takahashi and Goodman around the 15th of May of this year.

Takahashi told Goodman that he was going in the machinery business and wanted to rent a store for the business. Takahashi gave the impression that he had a lot of money. Takahashi said that he was going into the machinery business with his nephew and asked Goodman to find him a suitable location. Goodman said that he was going to Montana and would be gone for a while but would see what he could do. [88]

Conclusion of the Testimony

“Mr. Cohen: That is our case. Defendant Goodman rests.

Mr. Silverstein: No rebuttal. Government rests.

* * *

“Mr. Cohen: Defendant Goodman, if your Honor please, also moves for a directed verdict on the grounds and for the reason that the Government has failed to prove any of the ele-

ments constituting the crime of conspiracy or a violation of the Executive order of the President as of the date of July 2, 1940; for that reason, the directed verdict should be given the Defendant Goodman.

“The Court: Motion denied; exception noted.”

THIRD EXCEPTION.

During the Closing Argument on Behalf of the Government the Following Took Place:

* * *

“Mr. Silverstein: Now let me say to you, this is a conspiracy charge, and if these defendants, or either of them, knew that the Japanese were purchasing these diamonds for export purposes, and they aided and abetted, they are guilty under the law with knowledge of the conspiracy, if we show that beyond a reasonable doubt, because they don't have to take active part; if they do anything in furtherance of the object of that conspiracy, with [89] knowledge of it, under the law they are a party to it, they are a partnership, they are an agent for one another; and if these Japanese took these diamonds, and there is evidence before you that Takizawa went up to San Francisco in an automobile with another Japanese who was leaving for Japan—I don't know whether those diamonds went aboard the boat; I say that you have a right to infer that they did; that they went aboard one of the

Japanese boats to get over to Japan—I say the evidence would give you the right to infer, after considering all of the evidence together, that that is just what took place, and that is what would have taken place on the other diamonds if they could have gotten away with it because there are ways that you know of to smuggle out of the United States.

Mr. Peterson: I want to take an exception to Mr. Silverstein's statement that the Japanese was going to San Francisco and then to Japan."

FOURTH EXCEPTION

"Mr. Silverstein: I didn't say that. I say there was a Japanese that was going to Japan.

The Court: The Court recalls testimony where Takizawa—I think that is the way you pronounce it—went to San Francisco with another Japanese who was leaving for Japan; and one of the witnesses anyhow testified that he took this Japanese friend that was going to Japan, *too* the diamonds to San Francisco, and the last time he saw them was in a hotel room.

Mr. Silverstein: That was Nakauchi, not Takizawa; [90] I was wrong about the name.

So, therefore, some of the diamonds undoubtedly reached over there because letters came back to Takahashi concerning the quality, and you have a right, I believe, to infer that, from

the facts we have shown you here, that logically, reasonably and honestly, and in all fairness to the defendant, you should conclude that they did reach there because of what came back and the conversations that Takahashi had with these defendants concerning the quality of the diamonds.”

* * *

THE COURT'S INSTRUCTIONS TO THE JURY

“The Court: Gentlemen of the jury, you have listened to the evidence; you have heard the arguments. The Court has heretofore read to you certain sections of the law upon which this indictment is based. I shall now give you the instructions as to the law of the case.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent in all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially [91] considering all of the evidence, you

do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without its being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of

guilt, or there is a reasonable doubt [92] as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence.

In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relation which he bears to the Government or the defendants, the manner in which he might be affected by the verdict and the extent to which is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust

his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' [93] testimony.

The defendants have offered themselves as witnesses and have testified in the case. Having done so, you are to estimate and determine their credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendants may have in the case, their hopes and their fears, and what they have to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remem-

bering that the defendants are entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. [94] Jurors are expected to agree upon a verdict where they conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced it is erroneous. In determining what your verdict shall be, you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts. The law you must accept from the Court as correctly declared in these instructions.

The Court charges you that it is a well settled rule of law that if there are two reasonable constructions which can be given to facts proven, one favorable and the other unfavorable to a party charged with a crime, it is the duty of the jury to give to the accused that which is favorable to him and to his innocence rather than that which is unfavorable.

The Court instructs the jury that you should not be led to convict the defendants for the purpose of deterring others from the commission of like offenses, or for fear that a crime might go unavenged. No such reason can be sufficient to overcome that just and humane provision of our laws which says that no man [95] shall be convicted of a criminal offense unless his guilt shall be clearly established to a moral certainty and beyond all reasonable doubt.

You are further instructed that you are not to allow yourselves to be prejudiced in any manner against the defendants or either of them on account of the nature of the charge set forth in the indictment.

The good character of a defendant as to the traits involved under the charge, when such is shown, is a fact to be considered in connection with all the other facts and circumstances adduced in evidence and if, upon such consideration, the jury are not satisfied beyond a reasonable doubt of a defendant's guilt, they should acquit him. If, however, they are so satisfied that a defendant is guilty, they should convict him notwithstanding proof of good character.

Evidence may be either direct or indirect. Direct evidence is that which proves a fact in dispute directly, without an inference or pre-

sumption, and which itself, if true, conclusively establishes the fact. Indirect evidence is that which tends to establish the fact in dispute by providing another fact which, though true, does not of itself conclusively establish the fact in issue but which affords an inference or presumption of its existence. Indirect evidence is of two kinds, namely, presumptions and inferences. A presumption is a deduction which the law expressly directs to be made from particular [96] facts. Unless declared by law to be conclusive, it may be controverted by other evidence, direct or indirect. But, unless so controverted, the jury is bound to find according to the presumption. An inference is a deduction which the reason of the jury draws from the facts proved. This must be founded upon a fact or facts as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the persons whose act is in question, the course of business or course of nature. The word "propensity" as used in this instruction means "natural or habitual inclination or tendency".

A fact proven to your satisfaction by proof of circumstances from a consideration of various items of indirect evidence, is nonetheless as effectively established as though it depended upon direct evidence. Such circumstances must be connected in such a way as to concur and

lead directly to the conclusion which may be indicated thereby.

The law under which the indictment in this case is drawn provides that if two or more persons conspire to commit any offense against the United States, and one or more of them does any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty.

In order to establish the crime charged, it is necessary, first, that the conspiracy or agreement to commit the particular offense against the United States as alleged in the indictment be established, and [97] secondly, to prove further that one or more of the parties engaging in the conspiracy has committed some act to effect the object thereof.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an express or formal agreement for the unlawful venture or scheme, or that they should directly, by words or in writing, state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words,

when an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy. The success or failure of the conspiracy is immaterial, but before the defendants may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and that the defendants were active parties thereto.

In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is necessary that you be satisfied beyond a reasonable doubt that a conspiracy as charged in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner [98] described in the indictment. It is necessary further that, in addition to the showing of the unlawful conspiracy or agreement, the Government prove to your satisfaction, beyond a reasonable doubt, that one or more of the overt acts described in the indictment was done by one or more of the defendants or at their direction or with their aid.

Under the charge made the conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable

doubt, before any defendant can be convicted, that such defendant was a party to the conspiracy and unlawful agreement charged, and that he continued to be such up to the time that overt acts were committed, if the evidence shows that there were any such. The mere fact that either or any of the defendants named may have engaged in the performance of any of the acts charged in the indictment as overt acts, would not authorize a conviction by reason of that fact alone, but it is necessary to show that such defendants or defendants were parties to the conspiracy and unlawful agreement before their guilt of the offense charged is made out.

Each party must be actuated by an intent to promote the common design. If persons pursue by their acts the same unlawful object, one performing one act, and a second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object. Cooperation in some form [99] must be shown. There must be intentional participation in the transaction with a view and purpose to further the common design. And if a person, understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator. And so a new party, coming

into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participation in the conspiracy may be found, like any other fact, as an inference from facts proved.

Where the existence of a criminal conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan and in furtherance of the common object, is considered the act and declaration of all the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of the conspiracy may be cir- [100] cumstantial. Where circumstantial evidence is relied upon to establish the con-

spiracy or any essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants or either of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were parties to the conspiracy as charged, then you should make the deduction and find accordingly.

It is not necessary that it be shown that any person concerned in the alleged conspiracy profited by the things which he did, but if any of the defendants, with knowledge that the law was designed to be violated in the particular manner charged in the indictment, aided in any way by affirmative action in the accomplishment of the unlawful act, they would be guilty. To this statement there is one exception, and that is, if before any overt act has been committed on the part of any conspirator or at his suggestion or with the aid or participation, any such conspirator withdraws from the con-

spiracy and wholly disassociates himself from the project or the carrying out thereof, he ceases to be a conspirator and is without guilt.

You are instructed that if I have said or done anything which has suggested to you that I am inclined [101] to favor the claims or position of either party, you will not suffer yourselves to be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intimated nor intended to intimate, any opinion as to what witnesses are or are not worthy of credence; what facts are or are not established, or what inferences should be drawn from the evidence adduced. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

If in these instructions, any rule, direction, or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason you are not to single out any certain sentence, or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and to regard each in the light of the others.

The verdict to be rendered must represent the considered judgment of each juror.

In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

When you retire to your jury room to deliberate, you will select one of your number as foreman and he will sign your verdict for you when it has been agreed upon. You will then return into court with the verdict and your foreman will represent you as your spokesman in the further conduct of this case in this court.

Forms of verdicts have been prepared for your [102] convenience, and when you have agreed upon a verdict, the foreman will sign the verdict upon which you agree and return it into court."

There were no exceptions to the court's charge and instructions.

The cause was then submitted to the jury for their consideration and verdict. Thereafter, the jury unanimously rendered its verdict finding the defendants, Hyman Howard Goodman and Elwood L. Keeler, and each of them, guilty as charged in the indictment.

On December 3, 1941, the court sentenced the defendant Goodman to two years in a Federal Penitentiary and fined him \$5,000. [103]

STIPULATION

It is hereby stipulated that the foregoing is a full and true Bill of Exceptions, that it contains all of the evidence and proceedings at the trial in this case, and that it may be settled and filed as such.

Dated at Los Angeles, California, January 6, 1942.

WM. FLEET PALMER,
United States Attorney,
By LEO V. SILVERSTEIN,
Assistant U. S. Attorney.
LEO GOODMAN &
M. SEATON COHEN,
By M. SEATON COHEN,
Attorneys for defendant,
Hyman Howard Goodman.

ORDER
SETTLING BILL OF EXCEPTIONS

The foregoing is a full and true Bill of Exceptions in this case and contains all of the evidence and proceedings at the trial and it is hereby settled as such by the undersigned United States District Judge who presided at the trial, within the time allowed by law, as extended by the court within the time allowed by law.

Dated at Los Angeles, California; January 7, 1942.

BEN HARRISON,
United States District Judge.

[Endorsed]: Filed Jan. 7, 1942. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF DEFENDANT
HYMAN HOWARD GOODMAN

Defendant Hyman Howard Goodman alleges, in connection with his appeal, that the following prejudicial errors were committed in the proceedings in this case in the District Court and he therefore sets forth the following assignment of errors:

1st Error:

The facts and matters alleged in the indictment do not constitute any offense by the defendant Goodman against the laws of the United States and the District Court therefore erred in [105] entering judgment against and pronouncing sentence upon the said defendant.

2nd Error:

At the end of the Government's case the following took place (Bill of Exceptions, pp.48-49):

“Mr. Silverstein: The Govrenment rests.”

* * * * *

“Mr. Peterson: The Defendant Keeler now moves, at the close of the Government's case in chief, that the Court instruct the jury to return a verdict of not guilty against the Defendant Keeler, as charged in the indictment, on the ground they have not sufficient evidence to warrant the case going to the jury.

Mr. Cohen: The defendant Goodman interposes the same motion.

The Court: Motion denied.

Mr. Peterson: Exception allowed to each defendant?

The Court: Exception allowed to each defendant."

This motion by the defendant Goodman should have been granted and its denial by the District Court was erroneous for the reason that there was not sufficient evidence to warrant sending the case to the jury or to support a verdict of guilty or to show that the defendant Goodman committed the offense charged against him in the indictment.

3rd Error:

At the conclusion of the testimony the following took place (Bill of Exceptions, p. 71):

"Mr. Cohen: That is our case. Defendant Goodman rests.

Mr. Silverstein: No rebuttal. Government rests." [106]

"Mr. Cohen: Defendant Goodman, if your Honor please, also moves for a directed verdict on the grounds and for the reason that the Government has failed to prove any of the elements constituting the crime of conspiracy or a violation of the Executive order of the President as of the date of July 2, 1940; for that reason, the directed verdict should be given the Defendant Goodman.

The Court: Motion denied; exception noted."

This motion by the defendant Goodman for a directed verdict should have been granted and its denial by the District Court was erroneous for the reasons that the Government failed to prove the elements constituting the crime charged in the indictment and the evidence was insufficient to warrant sending the case to the jury.

4th Error:

During the examination of the witness Nakauchi for the Government the following took place (Bill of Exceptions, pp. 24-26):

“Examination by Mr. Silverstein:

“Q. Other than that, have you ever received any other diamonds? A. Yes, once.

Q. From whom?

A. I think either Mr. Takahashi or Mr. Takizawa.

Q. And when was that?

A. The end of July, I think.

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“Q. What did you do with them?

A. I at one time had in my hand a bag or something [107] that contained diamonds.

Q. What did you do with them after you received them?

A. I left them in a certain room in a hotel in San Francisco.

Q. You did that yourself? A. Yes.

The Court: Who gave you the diamonds?

The Witness: I think I received them from Mr. Takizawa.

The Court: Did you take them to San Francisco?

The Witness: My friend was returning to Japan and I chauffeured him up there.

By Mr. Silverstein:

Q. You chauffeured somebody that was going back to Japan? A. Yes.

Q. You drove somebody up north, is that it? A. Yes.

The Court: You took the diamonds with you?

The Witness: I do not know whether I had the diamonds or not, but I understood—I heard that the diamonds were in that bag.

Mr. Peterson: That, of course, ought to be stricken.

The Court: Just a moment. I will find out. What bag?

The Witness: A portable phonograph.

The Court: Who told you there were diamonds in there?

The Witness: Mr. Takizawa.

The Court: Is that one of the defendants in this case?

The Witness: The man that testified here before me.

Mr. Peterson: I now move to strike the testimony relative to the San Francisco episode upon the grounds that it has nothing to do with any of the issues in [108] this case, entirely outside of the scope of this indictment; it is hear-

say as against the defendant whom I represent.

The Court: It is a statement by a co-defendant. He said the satchel or bag contained industrial diamonds, and he took them to San Francisco.

Mr. Peterson: My recollection of his testimony is that he was told that they contained it.

The Court: He said one of the defendants told him. That would be binding, if there is a conspiracy.

Mr. Peterson: If it was within the scope of the indictment.

The Court: Objection overruled.

Mr. Peterson: Note an exception. May it be understood that if one of us makes an objection, it may be deemed by the other counsel."

The admission of the testimony of the witness Nakauchi, herein quoted, as to the facts that the bag or portable phonograph contained diamonds and that the defendant Takizawa told him that there were diamonds in the bag, and the refusal to strike the testimony were erroneous for the reason that the testimony was hearsay and inadmissible.

5th Error:

During the closing argument on behalf of the Government the following took place (Bill of Exceptions, pp. 71-73):

"Now let me say to you, this is a conspiracy charge, and if these defendants, or either of them, knew that the Japanese were purchasing these diamonds for export purposes, and they

aided and abetted, they are guilty under the law with knowledge of the conspiracy, if we show that beyond a reasonable doubt, [109] because they don't have to take active part; if they do anything in furtherance of the object of that conspiracy, with knowledge of it, under the law they are a party to it, they are a partnership, they are an agent for one another; and if these Japanese took these diamonds, and there is evidence before you that Takizawa went up to San Francisco in an automobile with another Japanese who was leaving for Japan—I don't know whether those diamonds went aboard the boat; I say that you have a right to infer that they did; that they went aboard one of the Japanese boats to get over to Japan—I say the evidence would give you the right to infer, after considering all of the evidence together, that that is just what took place, and that is what would have taken place on the other diamonds if they could have gotten away with it because there are ways that you know of to smuggle out of the United States.

Mr. Peterson: I want to take an exception to Mr. Silverstein's statement that the Japanese was going to San Francisco and then to Japan.

Mr. Silverstein: I didn't say that. I say there was a Japanese that was going to Japan.

The Court: The Court recalls testimony where Takizawa—I think that is the way you

pronounce it—went to San Francisco with another Japanese who was leaving for Japan; and one of the witnesses anyhow testified that he took this Japanese friend that was going to Japan, took the diamonds to San Francisco, and the last time he saw them was in a hotel room. [110]

Mr. Silverstein: That was Nakauchi, not Takizawa; I was wrong about the name.

So, therefore, some of the diamonds undoubtedly reached over there because letters came back to Takahashi concerning the quality, and you have a right, I believe, to infer that, from the facts we have shown you here, that logically, reasonably and honestly, and in all fairness to the defendant, you should conclude that they did reach there because of what came back and the conversations that Takahashi had with these defendants concerning the quality of the diamonds.”

The statement by Mr. Silverstein that Takizawa went to San Francisco with another Japanese who was leaving for Japan and the statement by the Court that there was testimony that Takizawa went to San Francisco with another Japanese who was leaving for Japan and that there was testimony by one of the witnesses that he took this friend that was going to Japan, took the diamonds to San Francisco, and the last time he saw them was in a hotel room, were erroneous for the reasons that there was no admissible testimony as to such facts and that the only testimony in the record upon

which such statements could be based was the testimony by Nakauchi, which is quoted in the 4th error of these assignments, and which testimony was inadmissible and should have been stricken.

6th Error

Section 99, Title 50, United States Code, and Presidential Proclamation of July 2, 1940 are and each of them is unconstitutional for the reason that they constitute an invalid delegation of the legislative power of Congress to, and an invalid exercise of such power by, the executive branch of the Government. For that reason there could be no conspiracy to violate the said section and Proclamation and the District Court [111] therefore erred in entering judgment against and pronouncing sentence upon the defendant Goodman.

Wherefore, the defendant Hyman Howard Goodman, respectfully asks that the judgment and sentence appealed from be reversed and the indictment dismissed against him.

Dated Los Angeles, California this 7th day of January, 1942.

HYMAN HOWARD GOODMAN,
Defendant.

M. SEATON COHEN &
LEO GOODMAN,

By LEO GOODMAN,
Attorneys for Defendant
Hyman Howard Goodman.

[Endorsed]: Filed Jan. 7, 1942. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy. [112]

[Endorsed]: No. 9989. United States Circuit Court of Appeals for the Ninth Circuit. Hyman Howard Goodman, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed January 31, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit.

No. 9989

HYMAN HOWARD GOODMAN,
Appellant,
vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PARTS OF RECORD NECES-
SARY FOR THE CONSIDERATION
THEREOF.

The Appellant, Hyman Howard Goodman, hereby states that the points upon which he will rely on

this appeal will be the same as the Assignment of Errors heretofore filed herein.

The Appellant hereby designates the following documents to be included in the printed transcript of record:

1. Indictment
2. Arraignment and Plea
3. Verdict
4. Sentence and Judgment
5. Notice of Appeal (includes Grounds of Appeal)
6. Bond on Appeal
7. Order extending the time to file Bill of Exceptions
8. Bill of Exceptions with Order of Approval
9. Assignment of Errors.

Dated: January 27th, 1942.

LEO GOODMAN &
M. SEATON COHEN,
By LEO GOODMAN,
Attorneys for Appellant.

[113]

Rec'd Copy of within Statement this January 28,
1942.

WM. FLEET PALMER,
U. S. Atty.

[Endorsed]: Filed Jan. 31, 1942. Paul P.
O'Brien, Clerk.